167-104

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 779.

THOMAS PHILLIPS BRYANT, APPELLANT,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 12, 1897.

(16,558.)

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INDEX.

	Original.	Print.
Petition for writs of *habeas corpus* and certiorari	1	1
Writ of *habeas corpus*	4	2
Writ of certiorari	6	3
Return of United States commissioner to writs of *habeas corpus* and certiorari	8	3
Complaint	9	4
Warrant and commitment	15	6
Final warrant and commitment	22	10
Copy of evidence for extradition	27	12
Certificate of under secretary of state for home department	27	12
Certificate of Ambassador Bayard	28	13
Information and complaint	29	13
Warrant of arrest	32	15
Certificate of justice of the peace	34	15
Testimony of William Bradford Lang	35	16
James Elliot Park	36	16
Certificate of justice of the peace	38	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 21, 1897.

	Original.	Print.
Certificate of under secretary of state	39	17
Certificate of Ambassador Bayard	40	18
Testimony of H. B. Wilkins	41	18
James Henry Mack	42	19
Certificate of justice of the peace	43	19
Proceedings before United States Commissioner Shields	44	20
Memorandum of Commissioner Shields	53	24
Opinion, Lacombe, J	56	25
Order dismissing writs of *habeas corpus* and certiorari	61	28
Order committing petitioner to custody of United States marshal pending hearing of appeal	63	28
Assignments of error	64	29
Petition on appeal	67	30
Bond for costs on appeal	71	32
Citation	73	33
Clerk's certificate	75	33

1 To the circuit court of the United States for the southern district of New York:

The petition of Thomas Philips Bryant to this honorable court respectfully shows:

First. That your petitioner is unlawfully imprisoned and illegally restrained in his liberty in the jail of the city and county of New York, commonly known as Ludlow Street jail.

Second. That your petitioner was arrested by the United States marshal for the southern district of New York upon a warrant issued by John A. Shields, United States commissioner in and for the southern district of New York, which warrant was issued upon the complaint of Her Brittannic Majesty's consul general in the city of New York, and which warrant charged your petitioner with the crimes of forgery, embezzlement, and larceny, alleged to have been committed in the city of London.

Third. That the present cause or pretence of the imprisonment or restraint, according to the best knowledge and belief of the petitioner, is a commitment issued by John A. Shields, United States commissioner in and for the southern district of New York, committing petitioner to the custody of the United States marshal for the southern district of New York to await further proceedings upon the part of the Secretary of State of the United States for the extradition of your petitioner to the Kingdom of Great Britain for trial upon the charges of forgery, embezzlement, and larceny.

2 Fourth. That your petitioner was committed by the marshal of the United States for the southern district of New York to the custody of the warden of the jail of the city and county of New York, commonly known as Ludlow Street jail, to await further action in the extradition proceedings above referred to.

Fifth. Your petitioner avers that he is unlawfully and illegally restrained and imprisoned in violation of the laws of the United States and in violation of the treaty between the United States and the Kingdom of Great Britain ratified and confirmed in 1842 and the treaty supplemental thereto, relating to the extradition of alleged fugitives from justice.

Wherefore your petitioner prays that a writ of *habeas corpus* issue, directed to the marshal of the United States for the southern district of New York and to the warden of the jail of the city and county of New York, commonly known as Ludlow Street jail, commanding them and each of them to produce the body of your petitioner, by them imprisoned and detained, together with the time and cause of such imprisonment and detention; and your petitioner further prays that a writ of certiorari issue, directed to John A. Shields, United States commissioner in and for the southern district of New York, requiring the aforesaid John A. Shields to certify to this court the cause of the imprisonment of your petitioner, and true copies of the proceedings, complaint, warrant, depositions, trials, examinations, determinations, commitments, and record had before

3 him, and that the aforesaid returns upon the aforesaid writs be made to the circuit court of the United States for the south-

ern district of New York at a stated term thereof, to be held in the post-office building in the city, county, and State of New York on Friday, the 26th day of March, 1897.

Dated New York city, Mareh 22nd, 1897.

THOMAS P. BRYANT, *Petitioner.*

STATE OF NEW YORK, }
Southern District of New York, } *ss:*

Thomas Philips Bryant, being duly sworn, doth depose and say that the facts set forth in the above petition subscribed by him are true.

THOS. P. BRYANT.

Sworn to before me this 22nd day of March, 1897.

JAMES FERIN,
[SEAL.] *Notary Pablic, N. Y. Co.*

(Endorsed:) Circuit court of the United States, southern district of New York. In the matter of Thomas Phillipe Bryant. Petition for writs of *habeas corpus* and certiorari. Lorenzo Semple, attorney for petitioner, 120 Broadway, New York city. U. S. circuit court. Filed Mar. 22, 1897. John A. Shields, clerk.

4 The President of the United States of America to the marshal of the United States for the southern district of New York & the warden of the jail of the city & county of New York, Greeting:

We command you that you have the body of Thomas Philipe Bryant, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever the name the said Thomas Philipe Bryant is called or charged, before a stated term of the circuit court of the United States for the southern district of New York, to be held in the post-office building, in the city, county, and State of New York, on the 26th day of March, 1897, at 11 a. m., to do and receive what shall then and there be considered concerning said Thomas Philipe Bryant; and have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22nd day of March, 1897.

JOHN A. SHIELDS, *Clerk.*

LORENZO SEMPLE,
Attorney for Petitioner, 120 *Broadway, New York City.*

In obedience to the within writ I do herewith produce the body of the within-named Thomas Philips Bryant, together with the warrants for his arrest and for his commitment; which warrants show the time and cause of his present detention and imprisonment.

JOHN H. McCARTY,
U. S. Marshal, S. D. N. Y.

Dated N. Y., March 26, 1897.

5 (Endorsed:) United States circuit court for the southern district of N. Y. Matter of Thomas Philipe Bryant. Writ of *habeas corpus*. Lorenzo Semple, attorney for petitioner, 120 Broadway, New York city. The within writ is hereby allowed. E. H. Lacombe, circuit judge. Prisoner remanded until decision. March 26, 1897. E. H. Lacombe, U. S. circuit judge.

6 The President of the United States of America to John A. Shields, United States commissioner in and for the southern district of New York, Greeting:

We command you that you certify fully and at large to the United States circuit court in and for the southern district of New York, at a stated term thereof, to be held in the post-office building, in the city, county, and State of New York, on the 26th day of March, 1897, at 11 a. m., the day and cause of the imprisonment of Thomas Philipe Bryant, by you detained, as is said, by whatsoever name the said Thomas Philipe Bryant shall be called or charged, and that you further certify, fully and at large, the cause of the imprisonment of the said Thomas Philipe Bryant, and true copies of the proceedings, complaint, warrant, depositions, trials, examinations, determinations, commitments, and record had before you in the matter of the application for the extradition of Thomas Philipe Bryant under the treaty between the United States and the Kingdom of Great Britain; and have you then there this writ.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22nd day of March, 1897.

Allowed.

E. H. LACOMBE,
U. S. Circuit Judge.

JOHN A. SHIELDS, *Clerk.*
LORENZO SEMPLE,
Attorney for Petitioner,
120 *Broadway, New York City.*

7 (Endorsed:) United States circuit court for the southern district of N. Y. Matter of Thomas Philipe Bryant. Writ of certiorari. Lorenzo Semple, attorney for petitioner, 120 Broadway, New York city.

8 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, United States commissioner for the southern district of New York, in obedience to the foregoing writ of certiorari, do hereby certify that the papers hereto annexed and returned herewith contain the record of the proceedings had before me in the above-entitled matter.

New York, M'ch 26, 1897.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y., and Commissioner, &c.

9 Before John A. Shields, Esq., U. S. commissioner, &c.

In the Matter of the Application for the Extradition of THOMAS PHILLIPS (or PHILIPS) BRYANT under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss.:

Percy Sanderson, Her Britannic Majesty's consul general at the port of New York, being duly sworn, doth depose and say upon information and belief:

First. That one Thomas Phillips (or Philips) Bryant did, heretofore and between the 23rd day of June, 1896, and the 10th day of September, 1896, inclusive, in the city of London, in that part of the United Kingdom of Great Britain and Ireland called England, and within the jurisdiction of her said Britannic Majesty, commit the crimes of embezzlement, larceny, forgery, and the utterance of forged paper, to wit, did, between the 23rd day of June, 1896, and the 10th day of September, 1896, inclusive, at the city of London aforesaid, feloniously steal, take, and carry away three bank checks, the property of Mess. Morison & Marshall, and did, during the same period, at the city of London aforesaid, feloniously steal,
take, and carry away the sum of two thousand pounds
10 sterling, lawful money of Great Britain and Ireland, the property of the said firm of Morison & Marshall; and did also, between the 23rd day of June, 1896, and the said 10th day of September, 1896, in the city of London aforesaid, being a clerk or servant of the said firm of Morison & Marshall, feloniously embezzle and convert to his own use, without the assent of his said employers, three bank checks, the property of his said employers; and did also during the period aforesaid, at the city of London, feloniously embezzle and convert to his own use, without the assent of his said employers, the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of his said employers; and did also, on or about the 23rd day of June, in the year 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the said 23rd day of June, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain bank check purporting to be drawn by the firm of Morison & Marshall on the Commercial Bank of Scotland, bearing date on or about the 23rd day of June, 1896, for the sum of five hundred pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland; and did also, on or about the 14th day of August, 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the 14th day of August, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain bank
check purporting to be drawn by the firm of Morison
11 & Marshall on the Commercial Bank of Scotland, number 54364, for the sum of five hundred pounds sterling, lawful

money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland aforesaid; and did also, on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain instrument purporting to be a bank check, dated on or about the 10th day of September, 1896, and drawn by the firm of Morison & Marshall, numbered 54373, on the Commercial Bank of Scotland, for the sum of seven hundred and twenty pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the said Commercial Bank of Scotland; and did also, between the said 23rd day of June and the 10th day of September, 1896, being in the employment of the firm of Morison & Marshall, as book-keeper and assistant cashier, did falsify the books of account of the said firm of Morison & Marshall by entering a fictitious account in the ledger of said firm in the name of T. H. North, and crediting to said account the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, which entry he charged in addition to the suspense account of said firm, and also made two false entries in the said fictitious account in the name of T. H. North, debiting the said accounts with the sums of seven hundred and eighty pounds sterling and one thousand two hundred
12 and twenty pounds sterling respectively; and did also falsify the said books of account of said firm by making entries in the cash book of the said firm of the sum of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling, which did not represent any transaction or transactions of the said firm of Morison & Marshall; and did also, between the 23rd day of June, 1896, and the 10th day of September, 1896, at the city of London aforesaid, with intent to conceal the larceny or misappropriation by him of the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of the firm of Morison & Marshall, make false entries in the books of account of the said firm of Morison & Marshall by charging or debiting the suspense account in the ledger, a book of account of the said firm of Morison & Marshall, with the sum of two thousand pounds sterling and carrying said debit of two thousand pounds to the credit of a fictitious account opened by him in the said ledger in the name of T. H. North, and by entering and debiting the said fictitious account T. H. North with the sums of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling respectively, and also by entering in the cash book, a book of account of the said firm of Morison & Marshall, the said sums of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling respectively; that the said entries so made in the said ledger and cash book did not
13 represent any transaction or transactions of the said firm of Morison & Marshall.

Second. That the said Thomas Phillips (or Philips) Bryant is a

fugitive from the justice of the Kingdom of Great Britain and Ireland and is now within the territory of the United States of America.

Third. That the crimes of which the said Thomas Phillips (or Philips) Bryant has so as aforesaid been guilty are offences within the treaty between the United States and Great Britain, and would justify the apprehension and commitment for trial of the said Thomas Phillips (or Philips) Bryant if the same had been committed with- the United States.

That deponent's information and belief *is* based upon a message received by cable from Her Majesty's secretary of state for foreign affairs and messages received by deponent from Her Majesty's ambassador to the United States of America, and also the possession of certified copies of the depositions taken in London and of a warrant issued in London for the apprehension of the accused for the offences herein stated.

PERCY SANDERSON.

Subscribed and sworn to before me this 18th day of February, 1897.

JOHN A. SHIELDS,

U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the Circuit Court of the United States for the Southern District of New York to Act as Such Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between the United States and any Foreign Government.

14 (Endorsed:) Before John A. Shields, Esq., U. S. commissioner, &c. In the matter of the application for the extradition of Thomas Phillips (or Phillips) Bryant under the treaty between the United States and Great Britain. Complaint. Charles Fox, att'y for H. B. M. consul gen'l, No. 3 Broad street, N. Y. city. Filed Feb'y 18, 1897.

15 The President of the United States to any marshal of the United States, to the deputies of any such marshal or any or either of them:

Whereas complaint has been made on oath under the treaty between the United States and Her Majesty the Queen of Great Britain and Ireland, concluded and signed at Washington on the 9th day of August, 1842, and of the supplementary treaty between the same high contracting parties signed July 12th, 1889, before me, John A. Shields, one of the commissioners appointed by the circuit court of the United States for the southern district of New York, and also a commissioner appointed to execute the acts of Congress entitled "An act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery of certain offenders," approved August 12th, 1848, and of the several acts amendatory thereof, that one Thomas Phillips (or Philips) Bryant did heretofore and between the 23rd day of June, 1896, and the 10th

day of September, 1896, inclusive, in the city of London, in that part of the United Kingdom of Great Britain and Ireland called England and within the jurisdiction of her said Britannic Majesty, commit the crimes of embezzlement, larceny, forgery, and the utterance of forged paper, to wit, did, between the 23rd day of June, 1896, and the 10th day of September, 1896, inclusive, at the city of London aforesaid, feloniously steal, take, and carry away three
16 bank checks, the property of Messrs. Morrison & Marshall, and did during the same period, at the city of London aforesaid, feloniously take, steal, and carry away the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of the said firm of Morison & Marshall; and did also between the 23rd day of June, 1896, and the said 10th day of September, 1896, at the city of London aforesaid, being a clerk or servant of the said firm of Morison & Marshall, feloniously embezzle and convert to his own use, without the assent of his said employers, three bank checks, the property of his said employers; and did also during the period aforesaid, at the city of London, feloniously embezzle and convert to his own use, without the assent of his said employers, the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of his said employers; and did also on or about the 23rd day of June, in the year 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the said 23rd day of June, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain bank check purporting to be drawn by the firm of Morison & Marshall on the Commercial Bank of Scotland, bearing dated on or about the 23rd day of June, 1896, for the sum of five hundred pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland; and did also on or about the 14th day of August, 1896, at the city of Lon-
17 don aforesaid, feloniously utter, well knowing the same to be forged, a certain bank check purporting to be drawn by the firm of Morison & Marshall on the Commercial Bank of Scotland, numbered 54364, for the sum of five hundred pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland aforesaid; and did also on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain instrument purporting to be a bank check, dated on or about the 10th day of September, 1896, and drawn by the firm of Morison & Marshall, numbered 54373, on the Commercial Bank of Scotland, for the sum of seven hundred and twenty pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the said Commercial Bank of Scotland; and did also between the said 23rd day of June and the 10th day of September, 1896, being in the employment of the firm of Morison & Marshall, as book-keeper and assistant cashier, falsify the books of account of the said firm of

Morison & Marshall by entering a fictitious account in the ledger
said firm in the name of T. H. North and crediting to said accou
the sum of two thousand pounds sterling, lawful money of Gre
Britain and Ireland, which entry he charged in addition to the su
pense account of said firm, and also made two false entries in t
said fictitious amount in the name of T. H. North, debiting t
18 said accounts with the sums of seven hundred and eigh
pounds sterling and one thousand two hundred and twen
pounds sterling, respectively; and did also falsify the said books
account of said firm by making entries in the cash book of the sa
firm of the sum of seven hundred and eighty pounds sterling a
one thousand two hundred and twenty pounds sterling respectivel
which did not represent any transaction or transactions of the sa
firm of Morison & Marshall; and did also, between the 23rd day
June, 1896, and the 10th day of September, 1896, at the city
London aforesaid, with intent to conceal the larceny or misappr
priation by him of the sum of two thousand pounds sterling, lawf
money of Great Britain and Ireland, the property of the firm
Morison & Marshall, make false entries in the books of account
the said firm of Morison & Marshall by charging or debiting the su
pense account in the ledger, a book of account of the said firm
Morison & Marshall, with the sum of two thousand pounds sterli
and carrying said debit of two thousand pounds to the credit of
fictitious account opened by him in said ledger in the name of T. H
North, and by entering and debiting the said fictitious accou
T. H. North with the sums of seven hundred and eighty poun
sterling and one thousand two hundred and twenty pounds sterlin
respectively, and also by entering in the cash book, a book
account of the said firm of Morison & Marshall, the said sums
seven hundred and eighty pounds sterling and one thousand tw
hundred and twenty pounds sterling, respectively; th
19 the said entries so made in the said ledger and cash book di
not represent any transaction or transactions of the said fir
of Morison & Marshall, and that the said Thomas Phillips (
Philips) Bryant is a fugitive from the justice of the Kingdom
Great Britain and Ireland and is now within the territory of th
United States, and that the crimes of which the said Thomas Phi
lips (or Philips) Bryant has so as aforesaid been guilty are offens
within the treaty between the United States and Great Britain an
would justify the apprehension and commitment for trial of the sai
Thomas Phillips (or Philips) Bryant if the same had been com
mitted within the United States:

Now, therefore, we command you forthwith to take the sai
Thomas Phillips (or Philips) Bryant and bring him before me, th
said commissioner, at my office, room 78, in the P. O. building, i
the city of New York, in order that evidence of the criminality
the said Thomas Phillips (or Philips) Bryant may be heard an
considered, and if deemed sufficient to sustain the charges that th
same may be certified, together with a copy of all the proceeding
to the Secretary of State, that a warrant may issue for his surrend
pursuant to said treaty.

Witness my hand and official seal this 18th day of February, in the year 1897.

[SEAL.] JOHN A. SHIELDS,

U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the Circuit Court of the United States for the Southern District of New York to Act as Such Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between this and any Foreign Government.

20 (Endorsed:) Before John A. Shields, Esq., U. S. commissioner, &c. In the matter of the application for the extradition of Thomas Phillips (or Philips) Bryant under the treaty between the United States and Great Britain. Warrant. Charles Fox, att'y for H. B. M. consul gen'l, No. 3 Broad street, N. Y. city.

The within-named accused, identified before me as the person charged herein and who says his right name is Thomas P. Bryant, being arrested and brought before me on the within warrant, and the charge herein contained being duly explained to him, and he, being duly cautioned and informed of his rights in the matter, and that he is entitled to an examination and to counsel, says that he demands an examination, and said examination being proceeded with, but not completed, the said accused, Thomas P. Bryant, is hereby committed to the custody of the United States marshal for the southern district of New York, to be brought before me for further examination on the 25th day of February, 1897, at three o'clock p. m.

Dated New York, February 18th, 1897.

JOHN A. SHIELDS,
U. S. Commissioner S. D. N. Y. and Commissioner, &c.

To John H. McCarty, Esq., U. S. marshal.

21 Attendance and examination adjourned to March 8th, 1897, at 2 o'clock p. m.

Feb'y 28, 1897.

JOHN A. SHIELDS,
U. S. Commissioner and Commissioner, &c.

Attendance and further examination adjourned to await decision of commissioner on motion to dismiss.

March 8, 1897.

JOHN A. SHIELDS,
U. S. Commissioner and Commissioner, &c.

22 In the Matter of the Application for the Extradition of THOMAS PHILLIPS BRYANT under the Treaty between the United States and Great Britain, Charged with the Crimes of Embezzlement, Larceny, Forgery, and the Utterance of Forged Papers.

To any marshal of the United States and to his deputies or any or either of them:

Whereas a warrant for the apprehension of Thomas Phillips Bryant, under the treaty between the United States and Great Britain concluded and signed at Washington on the 9th day of August, 1842, and of the supplementary treaty between the same high contracting parties signed at Washington July 12th, 1889, was issued by me on the 18th day of February, 1897, charging him, the said Thomas Phillips Bryant, with having heretofore and between the 23rd day of June, 1896, and the 10th day of September, 1897, inclusive, in the city of London, in that part of the United Kingdom of Great Britain and Ireland called England, and within the jurisdiction of her said Britan-ic Majesty, commit- the crimes of embezzlement, larceny, forgery, and the utterance of forged paper, to wit, did, between the 23rd day of June, 1896, and the 10th day of September, 1896, inclusive, at the city of London aforesaid, feloniously steal, take, and
23 carry away three bank checks, the property of Messrs. Morison & Marshall, and did during the same period, at the city of London aforesaid, feloniously steal, take, and carry away the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of the said firm of Morison & Marshall; and did also, between the 23rd day of June, 1896, and the said 10th day of September, 1896, in the city of London aforesaid, being a clerk or servant of the said firm of Morison & Marshall, feloniously embezzle and convert to his own use, without the assent of his said employers, three bank checks, the property of his said employers; and did also during the periods aforesaid, at the city of London, feloniously embezzle and convert to his own use, without the assent of his said employers, the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of his said employers; and did also, on or about the 23rd day of June, in the year 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the said 23rd day of June, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain bank check purporting to be drawn by the firm of Morison & Marshall on the Commercial Bank of Scotland, bearing date on or about the 23rd day of June, 1896, for the sum of five hundred pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland; and did also, on or about the 14th day of August, 1896,
24 at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the 14th day of August, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain bank check purporting to be drawn by

the firm of Morison & Marshall on the Commercial Bank of Scotland, number 54364, for the sum of five hundred pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the Commercial Bank of Scotland aforesaid; and did also, on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously forge, and thereafter, to wit, on or about the 10th day of September, 1896, at the city of London aforesaid, feloniously utter, well knowing the same to be forged, a certain instrument purporting to be a bank check, dated on or about the 10th day of September, 1896, and drawn by the firm of Morison & Marshall, numbered 54373, on the Commercial Bank of Scotland, for the sum of seven hundred and twenty pounds sterling, lawful money of Great Britain and Ireland, with intent thereby to defraud the said Commercial Bank of Scotland; and did also, between the said 23rd day of June and the 10th day of September, 1896, being in the employment of the firm of Morison & Marshall as bookkeeper and assistant cashier, *did* falsify the books of account of the said firm of Morison & Marshall by entering a fictitious account in the ledger of said firm in the name T. H. North and crediting to said account the sum of two thousand pounds sterling,
25 lawful money of Great Britain and Ireland, which entry he charged in addition to the suspense account of said firm, and also made two false entries in the said fictitious account in the name of T. H. North, debiting the said account with the sums of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling, respectively; and did also falsify the said books of account of said firm by making entries in the cash book of the said firm of the sum of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling, which did not represent any transaction or transactions of the said firm of Morison & Marshall; and did also, between the 23rd day of June, 1896, and the 10th day of September, 1896, at the city of London aforesaid, with intent to conceal the larceny or misappropriation by him of the sum of two thousand pounds sterling, lawful money of Great Britain and Ireland, the property of the firm of Morison & Marshall, make false entries in the books of account of the said firm of Morison & Marshall by charging or debiting the suspense account in the ledger, a book of account of the said firm of Morison & Marshall, with the sum of two thousand pounds sterling and carrying said debit of two thousand pounds to the credit of a fictitious account opened by him in the said ledger in the name of T. H. North, and by entering and debiting the said fictitious account T. H. North with the sums of seven hundred and eighty pounds sterling and one thousand two hundred and twenty
26 pounds sterling, respectively, and also by entering in the cash book, a book of account of the said firm of Morison & Marshall, the said sums of seven hundred and eighty pounds sterling and one thousand two hundred and twenty pounds sterling, respectively; that the said entries so made in the said ledger and cash book did not represent any transaction or transactions of the said firm of Morison & Marshall;

And whereas the said Thomas Phillips Bryant was thereafter arrested thereon and brought before me, and I proceeded to hear and determine the evidence of the criminality of the said Thomas Phillips Bryant as charged in said warrant, and I deeming the evidence sufficient to sustain the charges of forgery, embezzlement, and larceny under the provisions of said treaty, and in order that the evidence and proceedings may be certified to the Secretary of State, I hereby commit the accused, Thomas Phillips Bryant, to the custody of the United States marshal for the southern district of New York, to be by him held in the proper jail until a warrant for the surrender of the said Thomas Phillips Bryant shall issue according to the stipulations of the treaty or he shall be otherwise dealt with according to law.

In witness whereof I have hereunto subscribed my name and affixed my seal this 19th day of March, A. D. 1897.

[SEAL.] JOHN A. SHIELDS,

U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the Circuit Court of the United States for the Southern District of New York to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between the United States and any Foreign Government.

27 X 62691 | 6.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United States of Thomas Phillips or Philips Bryant, charged with the crimes of embezzlement, larceny, forgery, and uttering, committed in Great Britain, I hereby certify that, to the best of my knowledge and belief, the signature "Marcus Samuel," certifying to the correctness of the copies of the warrant of arrest and of the information and depositions on which the warrant was granted, is the signature of Alderman Marcus Samuel, one of Her Majesty's justices of the peace for the city of London having authority to issue and receive the same; and I further certify that, to the best of my knowledge and belief, the signature "John Pound," certifying to the correctness of the additional evidence sworn before him, is the signature of Alderman John Pound, one of Her Majesty's justices of the peace for the city of London having authority to issue and receive the same; and I further certify that such documents, so signed and so authenticated by a magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a minister of state and sealed with his official seal, would be received in evidence for similar purposes by the tribunals of Great Britain.

CHARLES S. MURDOCH,

Assistant Under Secretary of State for the Home Department.

Whitehall, 3rd February, 1897.

28 Certified at the foreign office for legalization of the foregoing signature.

[SEAL.]

London, February 3, 1897.

F. H. VILLIERS,
Assistant Under Secretary of State for Foreign Affairs.

EMBASSY OF THE UNITED STATES,
LONDON, *February* 3, 1897.

I, Thomas F. Bayard, ambassador extraordinary and plenipotentiary of the United States at London, hereby certify that the annexed papers, being copies of the warrant of arrest and of the information and depositions upon which the warrant was granted, proposed to be used upon an application for the extradition from the United States of Thomas Phillips (or Philips) Bryant, charged with the crimes of embezzlement, larceny, forgery, and uttering, alleged to have been committed in Great Britain, are properly and legally authenticated, so as to enable them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the acts of Congress of August 3, 1882; and I hereby further certify that the signature "F. H. Villiers," above written, is the true handwriting of the Hon. F. H. Villiers, one of the assistant under secretary-s of state of Her Britannic Majesty.

In witness whereof I hereto sign my name and cause
[SEAL.] the seal of this embassy to be affixed this third day of February, 1897.

T. F. BAYARD,
Ambassador Extraordinary and Plenipotentiary of the United States to Great Britain.

29 LONDON, *To wit:*

The information and complaint of James Elliot Park for and on behalf of John Morison and Thomas Shaw Marshall, and the deposition of James Elliot Park in support thereof, taken on oath this 22nd day of January, in the year of our Lord one thousand eight hundred and ninety-seven, before the undersigned, one of the aldermen of the city of London, being one of Her Majesty's justices of the peace in and for the said city and the liberties thereof, sitting at the Guildhall justice-room, in the said city, upon an application for a warrant against Thomas Phillips Bryant, formerly of 25 Regent square, London, W. C., and afterwards of 17 Enston square, London, N. W., to answer a charge of embezzlement and forgery of 3 cheques of the value of £1,720 and falsification of books, to wit, the ledger and cash book, between the 1st of May and the 1st of October, 1896.

The said James Elliot Park saith:

I am the manager and cashier of Messrs. Morison & Marshall, of Winchester house, London, E. C., merchants. John Morison is a partner with one other.

The defendant was employed by the said firm of Morison & Mar-

shall under me as book-keeper and assistant cashier from January, 1896, to October, 1896.

The defendant has made false entries in the books of the said firm amounting to £2,000.

The pass book of the firm's account at the Commercial Bank of Scotland, 72 Lombard street, E. C., shows that three
30 cheques were drawn on the account, the particulars of which are as follows:

Date of debit in pass book.	No. of cheque.	Amount.
1896, June 23	698	£500
" August 14	54364	£500
" September 10	54373	£720

Particulars of these cheques were not entered on the counterfoils in the cheque books, and these cheque books are not among those received back from the bank in the ordinary way. The defendant had under his control the cheque books and the old cheques received back from the bank. I am informed by the Commercial Bank of Scotland that these three cheques were presented for payment by the St. Martin branch of the National Provincial Bank of England in Aldersgate street. I believe from information received that the defendant had an account at this last-mentioned bank.

I believe that the defendant forged these three cheques, paid them into his own banking account, and destroyed the original cheques when they came again into his custody as assistant cashier of the said firm.

I believe that he has also in some way taken a further sum of £280, making, with the said three checks, the sum of £2,000, the amount of the false entries in the books of the said firm.

The said Bryant was not authorized to sign the firm's name on cheques, on these three aforesaid or any others.

31 These three cheques were abstracted from two cheque books which were not in use at the moment and no particulars at all appear on the counterfoil.

The said Bryant has embezzled in all a sum of £2,000, and has endeavored to disguise these defalcations by making a number of false entries in the ledger and cash book and false additions.

The said Bryant left our service in October last after giving us notice.

These defalcations were discovered at the audit about a week ago. From enquiries I have made I believe the said Bryant to be now in the United States of America, and I am authorized by my employers to ask for this warrant.

JAMES ELLIOT PARK.

Sworn to before me—
(S'd) JOHN POUND, *Alderman.*

32 LONDON, *To wit:*

To all and every the constables of the police force for the city of London and the liberties thereof and to all other constables and peace officers in the said city and liberties:

Whereas Thomas Phillips (or Philips) Bryant, late of 25 Regent square, London, clerk (hereinafter called the "accused"), hath this day been charged upon oath before the undersigned, one of the aldermen of the city of London, being one of Her Majesty's justices of the peace in and for the said city and the liberties thereof, for that the said accused, in the said city, being servant to John Morison and another, feloniously and fraudulently did embezzle and steal divers valuable securities received by him for and on account of his said masters, to wit, on the 23rd day of June, 1896, a certain banker's cheque of the value of £500; on the 14th day of August, 1896, a certain other banker's cheque of the value of £500; on the 10th day of September, 1896, a certain other banker's cheque of the value of £720, contrary to the statute, &c.;

Further, for that he did feloniously forge and then utter, knowing the same to be forged, divers orders for the payment of money, to wit, the said banker's cheques, with intent to defraud, contrary to the statute, &c.;

Further, for that he, being such servant as aforesaid, *as aforesaid*, there, between the 1st day of May and the 1st day of October, 1896, unlawfully, wilfully, and with intent to defraud, did falsify
33 certain books belonging to his said employer, to wit, the ledger and cash book, contrary to the statute, &c.:

These are therefore to command you in Her Majesty's name forthwith to apprehend the said accused and to bring him before me or some other of Her Majesty's justices of the peace for the said city, at the Guildhall justice-room, in the said city, to answer unto the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal this 22nd day of January, in the year of our Lord one thousand eight hundred and ninety-seven, at the Guildhall justice-room aforesaid.

(Signed) JOHN POUND, [SEAL.]
Alderman and Justice of the Peace for the City of London.

34 LONDON, *To wit:*

I, the undersigned, one of Her Majesty's justices of the peace, being one of the alderman in and for the said city of London, do hereby certify that this the foregoing writing of four pages contains true copies of the evidence and informations and complaint upon which a certain original warrant for the apprehension of
[SEAL.] Thomas Phillips (or Philips) Bryant, late of London, but now in or suspected of being in the Republic of the United States of America, was on the 22nd day of January, 1897, granted and issued by John Pound, Esquire, alderman and justice of the

peace of the said city, under his hand and seal, together with a copy of the said original warrant.

Dated this 26th day of January, 1897.

MARCUS SAMUEL.

35 William Bradford Lang on oath says:

I am the accountant of the Commercial Bank of Scotland, Limited, at their London office, situated at No. 72 Lombard street, in the city of London.

The firm of Morison & Marshall, of Winchester house, Old Broad street, in the city of London, are customers of the said bank and keep an account with the said office.

On the 23rd June, 1896, a cheque for £500, purporting to be drawn and signed by the said Morison & Marshall, and No.'d 698, was presented to the said bank for payment by the National Provincial Bank of England, Limited, for their Aldersgate Street branch, and paid. It was thereupon debited against the said Morison & Marshall's account.

On the 14th August, 1896, a cheque for £500, purporting to be drawn and signed by the said Morison & Marshall, and No.'d 54364, was presented to the said bank for payment by the National Provincial — of England for their Aldersgate Street branch, and paid. It was thereupon debited against the said Morisons & Marshall's account.

On the 10th September, 1896, a cheque for £720, purporting to be drawn and signed by the said Morison & Marshall, and No.'d 54373, was presented for payment by the National Provincial Bank of England for their Aldersgate Street branch, and paid. It was thereupon debited against the said Morison & Marshall's account.

(Signed) W. B. LANG.

36 James Elliot Park on his oath further says:

On the 22nd day of January, 1897, I went, in company with Inspector John Egan, of the city of London police, to the Aldersgate Street branch of the National Provincial Bank of England and was informed by Mr. Grugeon, the manager of the branch of the said bank, that Thomas Philips Bryant, of No. 17 Euston square, London, had an account at the said branch of their bank, and that on the 22nd day of June, 1896, the accused, Thomas Philips Bryant, paid into his own account there a banker's cheque for and of the value of £500, and on August 13th, 1896, the accused also paid into his said account a banker's cheque for £500, and also on the 9th September, 1896, the accused paid into his said account a bank's cheque for £720, and that nearly the whole of these sums have since been drawn out of his said account by the accused, Thomas Phillips Bryant.

The accused was during his term of service in receipt of a salary of £104 per annum. Messrs. Morison & Marshall had a sum exceeding £5,000 carried to the credit of a suspense account in their ledgers, and the accused had no right to interfere with this account. He, however, brought £2,000 from such suspense account to the

credit of a fictitious account which he opened in the ledger in the name of T. H. North. Against this sum of £2,000 he debited the following amounts, viz., £780 and £1,220.

The £780 was posted in the ledger from the cash book and consisted of £280 and the first-mentioned sum of £500, referred
37 to in my previous information, and was in respect of the identical cheque debited to Morison & Marshall on June 23rd, 1896, by the Commercial Bank of Scotland; but as to the £280 I am at present unable to absolutely trace the figures in consequence of the accused's bankers refusing me information.

The £1,220 was in respect of the cheques No.'d 54364, for £500, and No. 54373, for £720. These amounts the accused did not carry out in the cash column of the cash book; but in order that the balances of the ledger, cash book, and bankers' pass book should agree added the sum of £1,220 to the total at the bottom of the page, notwithstanding that amount was not in the column, nor was there any entry in the cash book relating to the £1,220 which could be posted to North's fictitious account.

(Signed) JAMES ELLIOT PARK.

The above depositions of William Bamford Lang and James Elliot Park were severally taken and sworn before me this 3rd day of February, 1897.

(Signed) JOHN POUND. [L. S.]

38 CITY OF LONDON, *To wit:*

I, the undersigned, one of Her Majesty's justices of the peace, being one of the aldermen in and for the city of London, do hereby certify that the foregoing writing of five pages contains a true copy of certain additional evidence which has this day been
[SEAL.] sworn before me in a certain information and complaint, upon which I, on the 22nd day of January, 1897, granted and issued a certain original warrant for the apprehension of the said Thomas Phillips (or Philips) Bryant.

Dated this 3rd day of February, 1897.

JOHN POUND. [SEAL.]

Endorsed: Guildhall justice-room, 3rd February, 1897. *Re* T. P. Bryant. Certified copy information, evidence, and warrant for extradition. Solicitors, Burn & Berridge, 11 Old Broad street, E. C.

39 In forwarding the annexed papers, to be used in support of an application for the surrender from the United States of Thomas Phillips Bryant, charged with the crimes of embezzlement, larceny, and forgery committed in Great Britain, I hereby certify that to the best of my knowledge and belief the signature "John Pound," certifying to the correctness of the annexed copy of depositions sworn before him, is the signature of John Pound, Esquire, alderman and one of Her Majesty's justices of the peace in and for the city of London, having authority to receive the same; and I further certify that such document so certified by a magistrate hav-

ing jurisdiction in the place where the same were taken and authenticated by a minister of State and sealed with his official seal would be received in evidence for similar purposes by the tribunals of Great Britain.

CHARLES S. MURDOCK,
Assistant Under Secretary of State for the Home Department.

Whitehall, 24th February, 1897.

Certified at the foreign office for legalization of the foregoing signature.

London, February 24, 1897.

F. H. VILLIERS,
[SEAL.] *Assistant Under Secretary of State for Foreign Affairs.*

40 EMBASSY OF THE UNITED STATES,
LONDON, *February* 24, 1897.

I, Thomas F. Bayard, envoy extraordinary and minister plenipotentiary of the United States at London, hereby certify that the annexed papers, being copies of depositions proposed to be used upon an application for the extradition from the United States of Thomas Phillips Bryant, charged with the crimes of embezzlement, larceny, and forgery, alleged to have been committed in Great Britain, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the act of Congress of August 3, 1882; and I hereby further certify that the signature "F. H. Villiers," at the foot of the preceding page, is the true handwriting of the Hon. F. H. Villiers, one of the assistant under secretaries of state for the foreign affairs of Her Britannic Majesty.

In witness whereof I hereto sign my name and cause the seal of this embassy to be affixed this 24th day of February, 1897.

[SEAL.] T. F. BAYARD,
Ambassador Extraordinary and Plenipotentiary of the United States to Great Britain.

41 Harry Bertram Wilkins on oath says:

I am a clerk in the St. Martin-le-Grand branch of the National Provincial Bank of England, Limited, in Aldersgate street, in the city of London.

2. Thomas Phillips Bryant, on the 12th day of July, 1895, opened at the said branch of the National Provincial bank an account, which is still open.

3. On the 22nd day of June, 1896, we received for the credit of the said Thomas Phillips Bryant a cheque for £500.

4. On the 13th day of August, 1896, we received for the credit of the said Thomas Phillips Bryant a cheque for £500.

5. On the 9th day of September, 1896, we received for the credit of the said Thomas Phillips Bryant a cheque for £720.

6. All cheques received by our said branch are sent to our head office to be cleared on our account.

7. All these above-mentioned three cheques were duly credited to the account of the said Thomas Phillips Bryant, and the greater part of the said sums of £500, £500, and £720 has been since drawn out by him.

(S.) H. B. WILKINS.

42 James Henry Mack on oath says:

1. I am the head of the Walks department of the head office of the National Provincial Bank of England, Limited, 112 Bishopgate street, in the city of London.

2. We receive at the head office all cheques paid into our branches and clear the cheques for our branches collecting the money from the banks on which the cheques are drawn.

3. In 1896, on the three below-mentioned days, we, on behalf of our St. Martin-le-Grand branch, cleared cheques for the respective amounts below mentioned drawn on the London office of the Commercial Bank of Scotland, Limited, receiving the respective below-mentioned sums from the said Commercial bank for our said branch:

Date of clearing.	Amount of cheque.
June 23rd	£500
August 14th	500
September 10th	720

(S.) J. H. MACK.

The above depositions of Harry Be-tram Wilkins and James Henry Mack were severally taken before me this 23rd day of February, 1897.

(S.) JOHN POUND. [SEAL.]

43 CITY OF LONDON, *To wit:*

I, the undersigned, one of Her Majesty's justices of the peace, being one of the aldermen in and for the said city, do hereby certify that the foregoing writing of two pages contains a true copy of certain further depositions which have been this day sworn before me in reference to a certain information upon which a certain original warrant for the apprehension of Thomas Phillips (or Philips) Bryant, late of 25 Regent square, London, but now in the United States of America, was on the 22nd day of January, 1897, granted and issued by me under my hand and seal.

Dated this 23rd day of February, 1897.

JOHN POUND. [SEAL.]

Endorsed: Guildhall justice-room. 23rd February, 1897. *Re* T. P. Bryant. Copy further evidence for extradition. Solicitors, Burn & Berridge, 11 Old Broad St., London, E. C.

44 In the Matter of the Application for the Extradition of THOMAS PHILLIPS BRYANT under the Treaty between the United States and Great Britain.

NEW YORK, *February* 18*th*, 1897.

Before John A. Shields, Esq., U. S. commissioner.

Present: Charles Fox, Esq., counsel for the British government; D. T. & L. Semple, counsel for the accused.

The accused, being arrested and brought before the U. S. commissioner on a warrant heretofore issued by him, and the charges in the warrant and complaint contained having been duly explained to the accused and he being duly cautioned and informed of his rights in the matter, and that he is entitled to an examination and to counsel, says that he demands an examination.

Counsel for the defendant objects to the complaint on the ground that it does not set forth facts of any of the crimes contained in the treaty between Great Britain and the United States on which extradition can be based, and, further, that there is contained in
45 one complaint the charges of larceny, embezzlement, forgery, utterance of forged papers, and making false entries in the books of account; and, further, that it sets forth in the sworn complaint three distinct charges of forgery and uttering of forged papers, and three distinct charges of embezzlement, without stating the times when the said forgeries were committed or the embezzlements occurred; and, further, that there is no allegation that any part or portion of the proceeds of the property alleged to have been embezzled from Morison & Marshall was received or came into the hands of the accused; and, further, objects to the complaint on the ground that no alleged forged instrument is set forth in the complaint; and, further, prays on behalf of the accused that the charges contained in the complaint be separated, and that he be arraigned on each separate charge, and this complaint as it stands be quashed and set aside, and that the accused be discharged from custody.

Overruled. Exception.

Counsel for the demanding government offers in evidence a certified copy of the information and complaint of James Elliot Park; also certified copy of warrant issued by John Pound, justice of the peace, at London, for the apprehension of the accused for the offence charged; also a certified copy of the deposition of William Bamford Lang; deposition of James Elliot Park, accompanied by the certificate of the foreign secretary and the certificate of the American ambassador.

Further hearing adjourned to February 25, 1897, at 3 p. m.

46 NEW YORK, *February* 25, 1897.

Present: Counsel as before, the accused, and the commissioner.

Counsel for the demanding government asks for an adjournment on the ground that the consul general has received a cable from the foreign office in London that further evidence in this case "is being

sent by today's mail." (That is dated February 24.) Counsel asks for an adjournment until the arrival of that evidence.

Counsel for the accused objects to any further adjournment of this matter, on the ground that the prisoner has already been detained for thirty days; that the original complaint has already been amended once; that this is entirely a new proceeding, and that the demanding government proceeded with the trial, closed its case, and rested, and objected strenuously for an adjournment for two or three days to enable counsel for the accused to examine the depositions. Counsel for the accused also states that he recognizes that this question of adjournment is entirely within the discretion of the United States commissioner; but this man shouldn't be kept in Ludlow Street jail for a lifetime. He has been there thirty days now, and it only takes five days to communicate with the demanding government. It is stated that they wish a deposition of the officers of the Provincial bank. Now, the deposition is on file with respect to the account of that bank. They have already taken that deposition, practically.

47 The COMMISSIONER: The demanding government have not closed their case. They have put in a lot of depositions. Then I gave counsel for the accused time to look over these depositions and interpose any objection as to the sufficiency of the evidence, and so on. Now counsel for the demanding government asks for an adjournment to put in additional evidence, and they are entitled to it. It has been so held over and over again in extradition cases. They have got a right to put in such evidence, provided it is done within a reasonable time. Counsel says that this additional evidence was mailed yesterday. I will adjourn this examination to a week from Monday.

Further hearing adjourned to March 8, 1897, at 3 p. m.

NEW YORK, *March* 8, 1897.

Present: Counsel as before, the accused, and the commissioner.

Counsel for the demanding government offers in evidence certified copy of a deposition of Harry Bertram Wilkins; also a certified copy of a deposition of James Henry Mack, covered by the usual certificates, and the certificate of the American ambassador that they are properly and legally authenticated, so as to entitle them to be received in evidence, as required by the act of Parliament of August 3, 1889.

Counsel for the accused states that he will note his objec-
48 tions to the testimony at the time of his argument in order to save time and have the record in proper shape.

Counsel for the demanding government calls the attention of the commissioner to section 515 of our Penal Code, showing that the making of entries in books for the purpose of concealing embezzlement or a loss is forgery under our law, and while he insists that the making of false entries was forgery at the common law, independent of the statute law, he simply desires to call attention to the fact that there is in our statute an explicit provision that the making of false entries is forgery.

Mr. SEMPLE: I understood you (Mr. Fox) to say at the first hearing that the charge of embezzlement and larceny was withdrawn. Did I understand you to say that?

Mr. FOX: Oh, no; on the contrary.

Mr. SEMPLE: Then this proceeding is for the three offences, as charged in the warrant and complaint?

Mr. FOX: The four offences—embezzlement, larceny, forgery, and the making of false entries.

Demanding government rests.

Counsel for the accused objects to the testimony offered by the demanding government—

First, with respect to the original warrant issued in Great Britain, and asks that it will not be considered by the court, but forced—that is a common-law expression—on the ground that the warrant comprises four different offences.

Counsel for the accused insists that the affidavit of Mr.
49 Park on information, for the purpose of procuring the warrant, shall not be considered as testimony in this case, inasmuch as it is on information and hearsay and simply for the purpose of apprehending this defendant.

Counsel for the accused objects to the court considering the testimony of Mr. Lang upon the ground that it is all secondary and hearsay evidence, inasmuch as he claims to be an accountant in the Commercial Bank of Scotland and his testimony relates to the transactions on the books of the company, which is primary evidence that he shouldn't be permitted to testify orally from the books, inasmuch as this is not a State institution, but a private banking concern, and there is no excuse given that would permit such testimony to be offered in this country either to establish a debt and certainly not as a proof of the offences charged in this complaint.

Counsel for the accused further objects to all of the testimony on the ground that the books are the only evidence that the commissioner can consider with respect to the transactions.

Counsel for the accused further objects that Mr. Park is not shown to be an expert accountant, and he is not shown to be the book-keeper of that concern, and the commissioner has not even been furnished with an abstract from the books.

Counsel for the accused further objects to Mr. Park's testimony and all the testimony in this case with respect to forgery until the forged instrument is shown to have been before some person at the time he testified or until he accounts for the absence of the forged instrument.

50 Counsel for the accused also objects to the testimony of H. P. Wilkins, which is simply to the effect that at the bank at which Mr. Bryant, the defendant, did his banking business on such and such days certain checks of so many dollars' denomination were put there by Mr. Bryant; it doesn't appear that the checks were drawn by Morison & Marshall at all, nor are they identified in any way as Morison & Marshall's checks; and objects to the testimony on the further ground that the person who is testify-

ing to these checks having been left there is simply mentioned as a clerk in the bank.

Counsel for the accused further objects to the testimony of Mr. Wilkins as mere hearsay testimony and as illegal, irrelevant, and incompetent, and objects to the testimony of J. H. Mack on the same grounds.

Counsel for the accused asks the commissioner to dismiss the first charge, forgery, on the ground that there is no evidence of forgery from these facts; as to the second charge, larceny, on the same ground, and as to false entry on the same ground; and then further on the ground that the crime of false entry is a crime that has been made a crime since the closing of the treaty of 1842, and the treaty of 1891 does not embrace false entry as an extraditable crime, neither does the treaty of 1842.

(No evidence offered in behalf of the accused.)

Adjourned subject to the decision of the commissioner.

51 NEW YORK, *March 19th*, 1897.

Present: Charles Fox, Esq., counsel for the British government; L. Semple, Esq., counsel for the accused; the accused and the commissioner.

Counsel for the accused states that he has no testimony to offer on behalf of the accused.

The commissioner renders his decision holding the accused for extradition.

Counsel for the accused asks that the commissioner will state upon the record whether he considers the evidence sufficient to hold the accused for extradition upon the crime of embezzlement.

The commissioner states that he has already expressed himself upon that point in the memorandum handed down by him today.

Counsel for the accused also asks that the commissioner will state upon the record whether he considers the evidence sufficient to hold the accused for extradition upon the charge of larceny.

The commissioner makes the same statement as that made to the previous request.

Counsel for the accused also asks that the commissioner will state upon the record whether he considers the evidence sufficient to hold the accused for extradition upon the charge of forgery.

The commissioner makes the same statement as that made to the previous request.

52 Counsel for the accused also asks that the commissioner will state upon the record whether he holds the accused for extradition upon the charge of false entries, or what is known as forgery in the third degree under the statutes of the State of New York and not common-law forgery.

Counsel for the British government objects to the commissioner being catechised in this way. The decision has been rendered and the opinion is there.

The commissioner makes the same statement as that made to the previous request of counsel for the accused.

The commissioner also states that the accused is held upon the charges of forgery, embezzlement, and larceny, and that it is for the demanding government to elect as to which of the charges it will try the accused on.

Counsel for the accused excepts to the refusal of the commissioner to place upon the record specific answers and grounds for the holding of the accused.

Counsel for the British government suggests that it go upon record that the decision rendered by the commissioner contains the grounds for his decision, and it is based upon the evidence submitted on behalf of the demanding government.

53 In the Matter of the Application for the Extradition of THOMAS PHILLIPS BRYANT under the Treaty between the United States and Great Britain.

Memorandum.

The defendant, a subject of Great Britain, is sought to be extradited to answer a criminal charge growing out of the following facts:

Defendant was a book-keeper and assistant cashier for Morrison & Marshall, of London, leaving there in October, 1896. In January of the present year a loss of £2,000 of the firm's money was discovered, and further investigation disclosed that the greater part of this amount, namely, £1,720, was withdrawn from the firm's bank account by three checks, two of £500 each and the third £720. These checks are not now to be found among the business papers of the firm, but appear to have been returned by the bank and charged against the firm's account, one June 23rd, one August 14th, and one September 10th. Fictitious accounts and transactions were entered in the firm's books by the defendant to cover these items, and he had charge of the check books and returned checks, and no particulars of these
54 checks were entered into the counterfoil or stubs of the check book from which the bank checks were obtained, and the only person who is shown to have any knowledge of their inception is the defendant, who had charge of such matters. The only trace of them in the firm's business is the debits made by the bank in the pass book and the fictitious entries made by the defendant to cover up the transactions.

Coincident to the firm's loss is a corresponding gain by the defendant, whose only known source of income was his salary of £104 per annum. The items and dates of these losses and gains are identical. The conclusion is irresistible that by some hook or crook the firm was defrauded by the defendant to the full amount expressed on the face of these checks. But the defendant insists that he cannot be extradited for forgery because the paper alleged to have been forged is not presented in the proof and specific evidence of its character presented. So far as these proceedings are concerned, the absence of the paper is sufficiently accounted for in the opportunity and incentive which the defendant had for its destruction. Without

further light than is afforded by the record in this case I am unable to reach a conclusion other than that the checks in question were false and fraudulent in their inception, and that they were unmistakeably known to be such by the defendant, who seems to have been solely concerned in their origin and use. Fictitious book entries to show balances, the deposit of these identical checks to the
55 credit of defendant, the absence of all particulars on the check stubs for want of authority in the defendant to sign the firm's name, and the disappearance of these particular checks after they came into defendant's custody from the bank sustain the allegations of the complaint sufficiently to account for the absence of the forged papers and make out a clear case of probable cause against the defendant.

The evidence clearly shows that the firm of Morrison & Marshall was criminally defrauded out of £2,000 by the defendant and by practices which, however viewed, constitute a crime specifically mentioned in the treaty stipulations between the two countries. If the moneys of that firm were not actually obtained as the proceeds of forgery, possession of them was obtained by the defendant in some way, and once in possession were converted to his own use; and it ought to be immaterial to this country whether on the facts appearing in these proceedings the English government shall put the defendant on trial for forgery, for embezzlement, or for larceny.

The defendant is accordingly held to await the final warrant of delivery.

JOHN A. SHIELDS,
U. S. Commissioner and Commissioner, &c.

(Endorsed:) U. S. circuit court. Filed March 29, 1897. John A. Shields, clerk.

56 United States Circuit Court, Southern District of New York.

In the Matter of the Application for the Extradition of THOMAS PHILLIPS BRYANT.

The accused, who was held for extradition for the offence of forgery, larceny, and embezzlement by U. S. Commissioner Shields, sued out a *habeas corpus* and certiorari.

Counsel for the relator contended:

First. That as to the three checks of Morrison & Marshall for 500 pounds, 500 pounds, and 720 pounds, respectively, which relator was charged with forging, there was no testimony before the commissioner tending to show his criminality.

Second. That as to the false entries which it is charged relator made in the books of Morrison & Marshall, such conduct on his part, even if proven, would not constitute an offence for which he could be extradited, for the reason that when the treaty of 1842 was executed the making of false entries was not forgery.

Third. That as to the additional sum of 280 pounds which the relator was charged with embezzling, there was no proof of criminality presented to the commissioner.

57 Fourth. That, as to the facts relating to the three check
if it be held that they were sufficient to warrant commitme
on the charge of forgery of the name of Morrison & Marshall a
obtaining money upon such forgery from the bank, then they ca
not be held as warranting a commitment for larceny or embezz
ment from Morrison & Marshall. If, on the contrary, it be he
that such facts were sufficient to warrant a commitment for e
bezzlement from Morison & Marshall, then they certainly cou
not warrant a finding that the accused obtained the same mon
from the bank upon forged checks.

Fifth. That inasmuch as the treaty provides that a surrendere
prisoner shall be tried only for the particular offence — which
may be surrendered, the demanding government and the commi
sioner should have elected, and, if the latter officer deemed th
evidence sufficient to commit upon the one charge, he should n
have committed upon the other.

LACOMBE, *Circuit Judge:*

The questions properly coming up for decision on this hearin
are not as comprehensive as was supposed when the case was argue
If, upon examination of the record, it should appear that there wa
legal evidence of facts before the commissioner on which to exerci
his judgment as to the criminality of the accused; that the com
missioner reached the conclusion that the accused had committe
any one of the several offences with which he was charged, an
that offence be one covered by the extradition treaty, sufficien
warrant for his detention is shown, and he should not b
58 discharged from custody, but should be held in jail until th
Secretary of State shall act upon the question of his surren
der to the demanding government or until the expiration of th
time provided for in sec. 5273, U. S. Rev. Stat. *In re* Stumpf, 1
Blatchf., 124. Without unnecessarily burdening this memorandu
with citation, it will be sufficient to refer to Ornelas *v.* Ruiz, 16
U. S., 502, for an exhaustive statement of the procedure in extra
dition cases, and the extremely limited functions to be discharge
by the court upon *habeas corpus* and certiorari to review commi
ment.

That forgery at common law, viz., the falsely making or alterin
a document to the prejudice of another, is one of the offences cov
ered by the treaty of extradition is not disputed. The evidence be
fore the commissioner disclosed the following facts:

Bryant was employed as a book-keeper and assistant cashier wit
the firm of Morison & Marshall, in the city of London, from Janu
ary to October, 1896, at a salary of £104 per annum. He had unde
his control the cheque books and the cheques returned from bank
after payment. He was not authorized to sign the firm's name t
any cheques. The firm kept an account with the London office o
the Commercial Bank of Scotland. On June 23, 1896, a cheque fo
£500, purporting to be drawn on the Commercial bank and to b
signed by Morrison & Marshall and numbered 698, was presente
for payment by the Provincial Bank of England, paid, and debite

to Morison & Marshall. On August 14, 1896, a like cheque
59 *was* £500, numbered 54364, was presented to the Provincial bank, paid, and debited; and on September 10, 1896, a third like cheque, £720, numbered 54373, was presented by the Provincial bank, paid, and debited. Bryant kept an account with the Provincial bank, in which he deposited on June 22, 1896, a cheque for £500; on August 13, 1896, a cheque for £500, and on September 9, 1896, a cheque for £720. The proceeds of these three checks were duly credited to Bryant's account, and the greater part of the sums.

The three cheques which were paid by the Commercial bank were abstracted from two cheque books which were not in use at the time and were accessible to Bryant. No particulars appear on the counterfoil of the book from which they were taken, nor are there any particulars of such cheques entered on the counterfoils of any cheque books in use, nor are these cheques among those received back from the bank in the ordinary way.

Morison & Marshall had a sum exceeding £5,000 carried to the credit of a suspense account in their ledgers. Bryant had no authority to interfere with this account. He, however, brought £2,000 from such suspense account to the credit of a fictitious account which he opened in the ledger in the name of T. H. North. Against this sum of £2,000 he debited the following amounts, viz: £750 and £1,220. The £780 was posted in the ledger from the cash book and consisted of £280 and £500, represented by check No. 698.
60 The £1,220 was in respect of the cheques No. 54364 for £500 and No. 54373 for £720. These amounts Bryant did not carry out in the cash column of the cash book, but, in order that the balance of the ledger, cash book, and bankers' pass book should agree, added the sum of £1,220 to the total at the bottom of the page, notwithstanding that amount was not in the column, nor was there any entry in the cash book relating to the £1,220 which could be posted to North's fictitious account.

This court most certainly cannot say, in view of this proof, circumstantial though it be, that there was no legal evidence upon which the commissioner could properly exercise his judgment as to the guilt or innocence of the accused, and when reaching the conclusion that the cheques were false he deems the evidence sufficient to sustain the charge of forgery under the provisions of the treaty and commits the accused to await the action of the Secretary of State, this court most certainly should not enlarge him upon *habeas corpus*. What action may be taken as to the form of his surrender is a matter for the disposition of the Executive.

(Endorsed:) Circuit court of the United States for the southern district of New York. In the matter of the application for the extradition of Thomas Phillips Bryant. Opinion. Lacombe, J. U. S. circuit court. Filed Mar. 29, 1897. John A. Shields, clerk.

61 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 29th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable E. Henry Lacombe, circuit judge.

In the Matter of the Petition of THOMAS PHILLIPS BRYANT for Writs of *Habeas Corpus* and Certiorari.

The above matter having come on to be heard upon returns to writs of *habeas corpus* and certiorari, and after hearing counsel for the respective parties, and on motion of Mr. Charles Fox, of counsel for H. B. M. consul general—

It is ordered that the said writs of *habeas corpus* and certiorari be dismissed and the prisoner remanded to the custody of the United States marshal for the southern district of New York.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Foregoing order approved as to form.

LORENZO SEMPLE,
Counsel for Pet'r.

62 (Endorsed:) United States circuit court, southern district of New York. In the matter of the petition of Thomas Phillips Bryant for writs of *habeas corpus* and certiorari. Order dismissing writs, &c. Charles Fox, counsel for H. B. M. consul general, No. 3 Broad street, New York. U. S. circuit court. Filed Mar. 31, 1897. John A. Shields, clerk.

63 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 6th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable E. Henry Lacombe, circuit judge.

In the Matter of THOMAS P. BRYANT.

On reading the allowance of the appeal and citation in the above matter and after hearing counsel—

Ordered that the petitioner, Thomas P. Bryant, be held in custody by the U. S. marshal until the hearing and decision or other disposition of the appeal in this matter by the Supreme Court of the United States.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Matter of Thomas P. Bryant. Order. Lorenzo Semple, 120 B'way, att'y for pet'r. U. S. circuit court. Filed Apr. 6, 1897. John A. Shields, clerk.

64 Supreme Court of the United States.

In the Matter of the Petition of THOMAS PHILLIPS BRYANT for Writs of *Habeas Corpus* and Certiorari.

And now comes the petitioner, Thomas Phillips Bryant, by Lorenzo Semple, his counsel, in connection with his petition of appeal from the order entered herein on the 31st day of March, 1897, dismissing the writ of *habeas corpus* herein, and makes and files the following assignments of error:

The court erred:

1. In dismissing the writ of *habeas corpus* and remanding the petitioner.

2. In holding that the petitioner is lawfully held in custody.

3. In holding that there was legal evidence before the commissioner tending to show that petitioner was guilty of crime of forgery as such crime was known under the treaty of extradition between the United States of America and the Kingdom of Great Britain.

4. In holding that the crime of making false entries in books of account, made by statute in the State of New York forgery in the third degree, was extraditable under the treaty between the
65 United States of America and the Kingdom of Great Britain.

5. In holding that there was legal evidence before the commissioner tending to show that petitioner was guilty of the crime of embezzlement.

6. In holding that there was legal evidence before the commissioner tending to show that petitioner was guilty of the crime of larceny.

7. In holding that the legal evidence before the commissioner, which set forth and describe one particular act or transaction, was legal evidence of the commission by the petitioner of four distinct and inconsistent crimes, to wit, forgery, false entries, embezzlement, and larceny.

8. In holding that there was any legal evidence before the commissioner to give the aforesaid commissioner jurisdiction of the subject-matter of the injury.

9. The court erred in holding that the detention of the petitioner is not a violation of the treaties between the United States and the Kingdom of Great Britain.

Wherefore petitioner prays that the said order dismissing the said writ of *habeas corpus* and remanding petitioner be reviewed, and that your petitioner be discharged from custody.

THOMAS P. BRYANT, *Petitioner.*

Lorenzo Semple, Esq., attorney for petitioner, 120 Broadway, N. Y. City.

66 (Endorsed:) United States Supreme Court. In the matter of the petition of Thomas Phillip Bryant for writ of *habeas corpus* & certiorari. Assignments of error. Lorenzo Semple, counsel for T. P. Bryant, 120 Broadway, New York. U. S. circuit court. Filed Apr. 5, 1897. John A. Shields, clerk.

67 Supreme Court of the United States.

In the Matter of the Petition of THOMAS PHILLIPS BRYANT for a Writ of *Habeas Corpus* and Certiorari.

To the Supreme Court of the United States of America:

The petition of Thomas Phillips Bryant respectfully shows:

First. That your petitioner is unlawfully imprisoned and illegally restrained of his liberty in the jail of the city and county of New York, commonly known as Ludlow Street jail, and is in custody in violation of the treaty between the United States of America and the Kingdom of Great Britain ratified in 1842 and the treaty supplemental thereto, ratified by the respective governments in 1890, the warden of the said jail claiming or pretending to so restrain your petitioner by virtue or authority of a certain warrant of commitment to him alleged to have been issued by one John A. Shields, commissioner of the circuit court of the United States in and for the southern district of New York, which warrant charges your petitioner with the commission of the crimes of forgery, larceny, and embezzlement, alleged to have been committed by your petitioner in the city of London, Kingdom of Great Britain.

68 Second. That your petitioner was arrested by the United States marshal for the southern district of New York upon a warrant issued by John A. Shields, United States commissioner in and for the southern district of New York, which warrant was issued upon the complaint of her Britannic Majesty's consul general in the city of New York and which warrant charged your petitioner with the crimes of forgery, embezzlement, and larceny as aforesaid.

Third. That thereafter your petitioner was arraigned before the aforesaid John A. Shields, United States commissioner, upon the aforesaid charges, and after hearing the evidence and proof offered in support of the charge your petitioner was committed by the aforesaid United States commissioner to the custody of the United States marshal for the southern district of New York to await further proceedings upon the part of the Secretary of State of the United States for the extradition of your petitioner to the Kingdom of Great Britain for trial upon the charges of forgery, embezzlement, and larceny.

Fourth. That your petitioner was thereafter committed by the marshal of the United States for the southern district of New York to the custody of the warden of the jail of the city and county of New York, commonly known as Ludlow Street jail, to await further action in the extradition proceedings above referred to.

Fifth. That thereafter, upon a petition setting forth the facts hereinbefore related, dated March 22nd, 1897, your petitioner

69 sued out writs of *habeas corpus* and certiorari in the circuit court of the United States in and for the southern district of New York, commanding the warden of the jail of the city and county of New York to have the body of your petitioner, together with the time and cause of your petitioner's imprisonment and de-

tention, and writ of certiorari, directed to John A. Shields, United States commissioner, directing him to certify the entire record of the proceedings had before him, and both of the aforesaid writs were made returnable before the circuit court of the United States at a stated term thereof to be held in the city of New York on the 26th day of March, 1897.

Sixth. That your petitioner was duly brought before the said circuit court of the United States by the said warden at the time mentioned in the said writ, and the said warden made his return as required by the term thereof, and the aforesaid John A. Shields made his return to the aforesaid writ of certiorari to the said court as required by the terms thereof.

Seventh. That, after hearing arguments of counsel, decision was reserved by the court, and thereafter, on the 31st day of March, 1897, an order was entered dismissing the said writ of *habeas corpus* and remanding your petitioner to the custody of the said warden.

Wherefore your petitioner, feeling himself aggrieved by said order, appeals therefrom to the Supreme Court of the United States and prays that this appeal may be allowed, and that a tran-
70 script of the said order and of all of the proceedings in the United States circuit court in and for the southern district of New York, and of the return of the said warden to the said writ of *habeas corpus*, and the return of the aforesaid John A. Shields to the said writ of certiorari may be transmitted to the Supreme Court of the United States for review therein.

Dated New York, April 1st, 1897.

THOS. P. BRYANT, *Petitioner.*

STATE OF NEW YORK, }
Southern District of New York, } ss:

Thomas Phillipe Bryant, being duly sworn, deposes and says that he is the petitioner above named; that he has heard read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

THOS. P. BRYANT.

Sworn to before me March 31, 1897.

A. MATHEWS,
Commissioner of Deeds, N. Y. Co.

(Endorsed:) United States Supreme Court. In the matter of the petition of Thomas Phillipe Bryant for writs of *habeas corpus* & certiorari. Petition of appeal. Lorenzo Semple, att'y for petitioner, 120 Broadway, New York. The within appeal is hereby allowed. E. Henry Lacombe, United States circuit judge. U. S. circuit court. Filed Apr. 6, 1897. John A. Shields, clerk.

71 Supreme Court of the United States.

In the Matter of the Petition of THOMAS PHILLIPE BRYANT for Writs of *Habeas Corpus* and Certiorari.

Know all men by these presents that we, Thomas Phillipe Bryant, as principal, and Geo. D. Moffat, as surety, are held and firmly bound unto the United States of America in the full and just sum of $250, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs and executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31 day of March, 1897.

Whereas lately, at a stated term of the circuit court of the United States for the southern district of New York, in a proceeding therein pending, an order was entered dismissing a writ of *habeas corpus* and remanding petitioner;

And the said petitioner having obtained an appeal and filed a copy thereof in the clerk's office of the said court to review said order:

Now, the condition of the above obligation is such that if the said petitioner, Thomas Philipe Bryant, shall prosecute said appeal to effect and shall answer all costs if he shall fail to make the said appeal good, then the above obligation to be void; else to remain in full force and effect.

72 THOS. P. BRYANT. [SEAL.]
GEO. D. MOFFAT. [SEAL.]

Sealed and delivered and taken and acknowledged this 31 day of March, 1897, before me—

A. MATHEWS,
Commissioner of Deeds, N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Geo. D. Moffat, being duly sworn, deposes and says that he is worth more than $500 over and above all his just debts and liabilities.

GEORGE D. MOFFAT.

Sworn to before me this 5th day of April, 1897.

ERNEST LUCE,
[SEAL.] *Notary Public, N. Y. City and Co.*

Approved as to form, amount, and sufficiency.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States Supreme Court. In the matter of the petition of Thomas Phillipe Bryant for writs of *habeas corpus* & certiorari. Surety for costs. Lorenzo Semple, att'y for petitioner, 120 Broadway, New York. U. S. circuit court. Filed Apr. 5, 1897. John A. Shields, clerk.

73 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

To the United States of America & the warden of the jail of the city and county of New York and U. S. marshal for the southern district of New York and Percy Sanderson, Esq., H. B. M. consul general, New York:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the 30th day of April, 1897, pursuant to an appeal on the part of Thomas Phillipe Bryant filed in the clerk's office of the circuit court of the United States in and for the southern district of New York, in a certain suit or proceeding entitled "In the matter of the application of Thomas Phillipe Bryant for writs of *habeas corpus* and certiorari," to show cause, if any there be, why the decision of the United States circuit court in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, on the 5 day of April, 1897.

E. HENRY LACOMBE,
U. S. Circuit Judge.

LORENZO SEMPLE,
Attorney for Petitioner, 120 *Broadway, N. Y. City.*

74 [Endorsed:] E. & A. B. 1507. Supreme Court of the U. S. In the matter of the petition of Thomas Phillipe Bryant for writs of *habeas corpus* & certiorari. Citation. Lorenzo Semple, attorney for petitioner, 120 Broadway, N. Y. city. U. S. circuit court. Filed Apr. 6, 1897. John A. Shields, clerk.

75 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to seventy-two (72), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of In the matter of the petition of Thomas P. Bryant for writs of *habeas corpus* and certiorari, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the said United States the one hundred and twenty-first.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. ——— ——— *vs.* ——— ———. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: Case No. 16,558. S. New York C. C. U. S. Term No., 779. Thomas Phillips Bryant, appellant, *vs.* The United States *et al.* Filed April 12th, 1897.

167-104

JAMES H. MCKENNEY,
CLERK.

167-104

779

IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter of the Petition OF THOMAS PHILLIPS BRYANT for writs of *habeas corpus* and *certiorari*.	Notice of Motion.

To CHARLES FOX, Esq.,
Counsel for H. B. M. Consul-General.

Please take notice that on April 12th, 1897, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the motion of which the annexed is a copy will be submitted to the Supreme Court of the United States for the decision of the said Court thereon.

Dated New York City, April 9th, 1897.

LORENZO SEMPLE,
Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter of the Petition OF THOMAS PHILLIPS BRYANT for writs of *habeas corpus* and *certiorari*.	Motion to Advance.

And now comes THOMAS PHILLIPS BRYANT, the petitioner above named, by LORENZO SEMPLE, his counsel, and moves the Court to advance the above entitled cause upon the calendar, and to set the same down for argument for a day certain.

The matter involved herein is an appeal by the petitioner from a final order of the Circuit Court of the United States in and for the Southern District of New York, dismissing writs of *habeas corpus* and *certiorari* obtained by the petitioner for the purpose of procuring his release from the custody of the United States Marshal for the Southern District of New York and the warden of the jail of the City and County of New York on the grounds that there was no legal evidence to give the Court jurisdiction of the subject matter, and that the detention of petitioner was in violation of the Constitution of the United States and the treaties of extradition between the United States and the Kingdom of Great Britain.

The reason for this application is that a warrant for the extradition of petitioner has been issued by the Honorable the Secretary of State of the United States, which warrant authorizes the trial of your petitioner upon the charges of forgery, em-

bezzlement and larceny, which warrant was issued without notice to petitioner or counsel, and petitioner is informed that said warrant is final so far as the State Department is concerned, and can only be withdrawn after decision upon the appeal by this Court.

The following letter was received by petitioner's counsel from the State Department:

" K/C DEPARTMENT OF STATE,

WASHINGTON, April 7, 1897.

LORENZO SEMPLE, Esquire,
Equitable Building, No. 120 Broadway,
New York City.

SIR:

I have received your letter of the 5th instant, in which you state that an appeal to the United States Supreme Court has been allowed by the United States Circuit Court, in New York, from the order made by the latter Court dismissing writs of *habeas corpus* and *certiorari* in the case of Thomas Phillips Bryant, who was committed for extradition by United States Commissioner Shields, upon the charges of forgery, embezzlement, etc. You ask me to suspend action upon the request of the British Government for the issuance of a warrant of surrender, until the decision of the Supreme Court is rendered.

In reply I have to say, by direction of the Secretary of State, that the warrant of surrender was issued by this Department on the 3rd instant. The issuance of the warrant, however, does not prejudice the examination of the legality of the detention of the fugitive by the courts upon *habeas corpus* or *certiorari*.

In reply to your request for permission to appear before the Secretary of State and present an argument in behalf of the accused, even after a decision is rendered by the Supreme Court, I have to say that the action of this Department in issuing a warrant of surrender is final and cannot be reversed by the Secretary of State. If the Supreme Court deems the surrender illegal, it will release the

prisoner; otherwise he will be carried away under the warrant.

Respectfully yours,
W. W. ROCKHILL,
Assistant Secretary.

Petitioner is now detained in the jail of the City and County of New York awaiting the decision of this Court upon this appeal, and prays that an early date may be set for argument.

Dated New York, April 9th, 1897.

LORENZO SEMPLE,
Counsel for Appellant,
120 Broadway,
New York City.

167-102
167-104

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Supreme Court of the United States,

OCTOBER TERM, 1896.

THOMAS PHILLIPS BRYANT,
Appellant,

AGAINST

THE UNITED STATES.

No. 16,558.

BRIEF FOR APPELLANT.

This is an appeal from a final order of the Circuit Court of the United States for the Southern District of New York, made and entered on the 31st day of March, 1897, dismissing writs of *habeas corpus* and *certiorari* sued out by appellant to obtain his release from the custody of the United States Marshal for the Southern District of New York and the Warden of the Jail of the City and County of New York.

The proceedings were originally instituted by a complaint made before John A. Shields, a United States Commissioner for the Circuit Court of the United States, duly authorized to act in cases of extradition, by one Percy Sanderson, Consul-General of Great Britain at the City of New York, against Thomas Phillips Bryant, the appellant herein, whom he charged with the crimes of forgery, larceny, embezzlement and false entries committed in the City of London, Kingdom of Great Britain, which subjected the said Bryant to extradition under Article

X. of the treaty between the United States and Great Britain proclaimed November 10, 1842, and the treaty supplementary thereto between the United States of America and Her Britannic Majesty proclaimed March 25, 1890.

The facts disclosed by the record, which consists entirely of depositions taken in London, are substantially as follows:

Facts.

Bryant was employed as bookkeeper and assistant cashier for the firm of Morrison & Marshall, in the City of London, at a salary of £104 per annum. He had under his control the check books and checks returned from bank for payment. Morrison & Marshall kept an account with the London office of the Commercial Bank of Scotland. On June 23, 1896, a check for £500, purporting to be drawn on the Commercial Bank and to be signed by Morrison & Marshall, was presented for payment by the Provincial Bank of England, and was paid and debited to Morrison & Marshall. On August 14, 1896, a like check for £500 was likewise presented by the Provincial Bank and paid, and on September 10, 1896, a third like check for £720 was presented by the Provincial Bank and paid and debited to the account of Morrison & Marshall.

Bryant kept an account with the Provincial Bank, in which he deposited, on June 22, 1896, a check for £500; on August 13, 1896, a check for £500, and on September 9, 1896, a check for £720. Three blank checks are now missing from an old check book belonging to Morrison & Marshall, which check book was not in use, and to which book Bryant had access. The three checks above referred to as having been paid by the Commercial Bank are not among those returned by said bank to its customer, Morrison & Marshall, and Bryant had access to the vouchers when the same were returned from the said bank.

Bryant opened a fictitious account in the books of Morrison & Marshall in the name of T. H. North, and made false entries in these books of account.

From the foregoing facts Commissioner Shields held: "That the conclusion is irresistible that by some hook or crook the firm of Morrison & Marshall was defrauded by Bryant to the full amount expressed on the face of these checks." And also that "if the moneys of that firm were not actually obtained as a proceeds of forgery, possession of them was obtained by Bryant in some way, and once in possession were converted to his own use, and it ought to be immaterial to this country whether on the facts appearing in this proceeding the English Government shall put the defendant on trial for forgery, for embezzelment or for larceny."

The Commissioner, upon this hypothesis, and without any regard to the rule laid down by the Supreme Court of the United States that the evidence must be sufficient to sustain the charge, on these meagre and bare facts held Bryant for extradition upon the charges of forgery, larceny and embezzelment.

The proceeding against Bryant was instituted before the Commissioner under Section 5270 of the Revised Statutes of the United States, authorizing certain United States Commissioners to act in cases of extradition, which section provides that if on such hearing the Commissioner deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, &c.

Article X. of the treaty of 1842 between the United States and Great Britain, under which the right to arrest and extradite Bryant is asserted, enumerates the following extradition ditable crimes: murder, assault with intent to commit murder, piracy, arson, robbery, forgery or the utterance of forged instruments. But this treaty specifically provides *that a person shall only be surrendered upon such evidence of criminality as, ac-*

cording to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension or commitment for trial if the crime or offense had been there committed, and that the evidence against the accused shall be sufficient to sustain the charges made.

Provision is made for the extradition of persons charged with the crimes of larceny and embezzelment by the treaty between the United States and Great Britain proclaimed in 1890.

Appellant contends that the Commissioner and the Circuit Court of the United States erred in holding him for extradition upon the facts proved, and relies upon the following points:

I.—That as to the three checks of Morrison & Marshall for £500, £500 and £720 respectively, which Bryant was charged with forging, there was no legal evidence before the Commissioner tending to show his criminality.

II.—That as to the false entries which it is charged Bryant made in the books of Morrison & Marshall, such conduct on his part, even if proven, would not constitute an offense for which he could be extradited, for the reason that when the treaty of 1842 was executed, the making of false entries in books of account was not forgery.

III.—That as to the additional sum of £280, which the appellant was charged with embezzling, there was no proof of criminality presented to the Commissioner.

IV.—That as to the facts relating to the three checks, if it be held that they were sufficient to warrant a commitment on the charge of forgery of the name of Morrison & Marshall, and obtaining money upon such forgery from the bank, then they cannot be held as warranting a commitment for larceny or embezzelment from Morrison & Marshall. If, on the contrary, it be held that such facts were suffi-

cient to warrant a commitment for embezzelment from Morrison & Marshall, then they certainly could not warrant a finding that the accused obtained the same money by larceny from Morrison & Marshall, and also that he obtained the same money from the bank upon forged checks.

V.—That inasmuch as the treaty provides that a surrendered prisoner shall be tried only for the particular offense for which he may be surrendered, the demanding government and the Commissioner should have elected, and if the latter officer deemed the evidence sufficient to commit upon the charge of forgery, he should not, upon the same evidence, have also committed upon the charges of larceny and embezzelment.

Point I.

As to the three checks of Morrison & Marshall for £500, £500 and £720 respectively, which Bryant was charged with forging, there was no legal evidence before the Commissioner tending to show his criminality.

In order to give the Commissioner jurisdiction of the subject matter, and authorize him to hold appellant for extradition upon the charge of forgery, there must be legal evidence tending to show that the appellant had committed the crime of forgery.

The decisions of the lower courts have been contradictory as to just what questions are brought up for review upon writs of *habeas corpus* and *certiorari* in extradition proceedings, and though it was formerly held that the courts would pass upon the weight of evidence and also upon errors committed by the committing magistrate upon the hearing, now all doubt upon this question has been finally removed by the decision of the Supreme Court of

the United States in the case of *Benson* v. *McMahon*, 127 U. S., at page 463. In that case Mr. Justice Miller said:

> "We are now engaged simply in an inquiry as to whether under the construction of the act of Congress and the treaty entered into between this country and Mexico *there was legal evidence before the Commissioner* to justify him in exercising his power to commit the person accused to custody to await the requisition of the Mexican government."

This same view is also taken by Her Britannic Majesty's government, and is expressed by Sir F. Pollock, Attorney-General of Great Britain, referring to the Treaty of 1842, as quoted by *Moore* on *Extradition*, as follows:

> "It was clearly provided that a person charged could be delivered up only on the production of such evidence as would warrant his committal for trial according to the laws of this country. Now the laws of this country require that a person shall not be committed for trial on suspicion, but only on such evidence as, if uncontradicted, would lead to the conclusion that the party was guilty of the offense of which he was charged."

The record of this appeal, therefore, comes before this Court in the nature of a demurrer to the evidence, and appellant insists that unless there is legal evidence in the record which, if uncontradicted, would lead to the conclusion that appellant was guilty of the offenses of which he is charged, then he is entitled to his discharge from custody, and that it is the duty of this Court to examine the record and pass upon this question.

The specific charge upon which appellant was held by the Commissioner was that he forged the name of Morrison & Marshall to three checks for £500, £500 and £720 respectively, and in order to give the Commissioner jurisdiction to hold appellant for extradition upon this charge, legal evidence must be

presented which would justify this Court in concluding that he had forged these checks.

Forgery, at common law, is the fraudulent making or altering of a writing or document to the prejudice of another, and appellant concedes that this crime is an extraditable one, but insists that there is no evidence against the appellant contained in the record.

To support the charge of forgery the evidence, in brief, is as follows:

Parks, the manager and cashier of the firm of Morrison & Marshall, swears that Bryant was employed by said firm as bookkeeper and assistant cashier. That he made false entries in the books of said firm amounting to £2,000. That the pass book of the firm's account at the Commercial Bank of Scotland showed that three checks were drawn on the firm's account and charged against the firm on June 23, August 14 and September 10, 1896, for £500, £500 and £720 respectively.

A clerk of the Provincial Bank of England testified that Bryant kept an account at said bank, and that on June 23, August 14 and September 10, 1896, he deposited in his account three checks for £500, £500 and £720 respectively, *but does not testify what signature was attached to the checks, giving simply dates and amounts of checks.* That these checks were presented to and were paid by the Commercial Bank of Scotland in the regular course of business.

Lang, an accountant of the Commercial Bank of Scotland, testified that the firm of Morrison & Marshall kept an account at the said bank. That on the 23d day of June, 1896, a check for £500 was presented and paid and debited against the said firm of Morrison & Marshall. That on the 14th day of August, 1896, a similar check for £500 was also paid. That on the 10th day of September, 1896, a similar check for £720 was also presented and paid.

Park further testified that Bryant made false entries and false additions in the books of account of Morrison & Marshall.

We submit that these facts are wholly insufficient to constitute the crime of forgery and that no legal evidence is presented that Bryant committed the crime of forgery in having forged or been in any way connected with the forging of the three checks above referred to.

No witness is produced who swears that he saw the name of Morrison & Marshall upon any writing or instrument or check which was not, in fact, the writing of Morrison & Marshall, or even that did not look like the writing of Morrison & Marshall, and there is nothing in the record to show that the checks referred to and paid by the Commercial Bank for £500, £500 and £720 respectively, were not actually signed by Morrison & Marshall; and the fact that these checks were paid by the said bank, whose officers knew the signature of Morrison & Marshall, tends to show that the said checks were actually signed by Morrison & Marshall, and this inference is all the more strong and irresistible when the further fact is considered that neither Morrison & Marshall, nor any member of the firm testified that the said identical checks were not, as a matter of fact, signed by them or by some person duly authorized to sign for them.

There is not even legal evidence in the record that Bryant was not actually authorized to sign the name of Morrison & Marshall to checks; the statement of Park, an employee and not a member of the firm of Morrison & Marshall, that Bryant was not authorized to sign the firm's name is not evidence and cannot be considered, because such a statement is evidently not within the personal knowledge of Park, as it might well be that if Bryant did sign the said checks Morrison or Marshall may have told him to sign them, and Park, in the very nature of things, could not have any knowledge upon the subject.

The checks in question were not produced in London at the time of the taking of the depositions, and no witness swears that the name signed to these identical checks was not signed by Morrison & Marshall.

A careful examination of text books and reports fails to disclose any case upon record in which a person has been held, tried or convicted of the crime of forgery, where the person whose name purported to be forged or some person familiar with his handwriting did not testify that the signature attached was not in fact the writing of the person it purported to be.

In the Matter of Farez, 7 Blatch., 345, it was held that where the charge is forgery on an extradition hearing, it must appear from the testimony of witnesses that the forged instrument was before them at the time of the making of the deposition, and that the writing was not the writing of the person it purported to be.

So dangerous would be the granting of the extradition of persons charged with forgery without such testimony, that the State of New York, in establishing rules governing the extradition of fugitives, positively requires (Rule 5) that if the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged must be produced, or its absence satisfactorily explained.

We submit that there is no legal evidence of forgery, and the most that can be said is that the fact of the deposits by Bryant on the dates mentioned of checks for £500, £500 and £720 respectively, raises suspicion against him. But it is well settled by the decisions of this Court that a person cannot be held in extradition cases upon suspicion only, and *legal evidence* must be produced of guilt, before a man is put upon his defense and deprived of his liberty.

Point II.

Making of false entries by Bryant in the books of Morrison & Marshall, even if proven, would not constitute an offense for which he could be extradicted, for the reason that when the treaty of 1842 was executed the making of false entries was not forgery.

Ex parte Eno, 10 Q. L. R., 194.
Moore on Extradition, page 659.
In re Windsor, 6 B. & S., 529.
Ex parte Lamiraude, 10 L. C. Jur., 280.
In re Tully, 25 Fed. Rep., 812.
Wharton's Criminal Law, Vol. 1, Sec. 696.

The extradition treaty between the United States and Great Britain executed in 1842 made the crime of forgery extraditable, and it has since been repeatedly held both by the Courts of the United States and of England that forgery in order to be extraditable must come under the definition of forgery as it was generally understood by the general law of England and the United States at the time of the ratification of the aforesaid treaty in 1842 by the United States and Great Britain.

Article 10 of this treaty constituted the only extradition treaty in force between the United States and Great Britain from 1842 to 1890.

In 1890 the treaty of 1842 relating to the extradition of criminals was further extended by both parties so as to cover certain *additional crimes*, which *additional crimes* were specifically set forth in the said treaty.

The treaty of 1842 was not in any sense abrogated, reaffirmed or re-enacted, but said treaty was extended so as to cover certain additional crimes which prior to this time had not been extraditable under the treaty of 1842.

Upon the hearing before the Commissioner, Bryant was held for extradition for the crime of forgery in having made false entries in the books of account of Morrison & Marshall, and under the warrant for his extradition which has now been issued by the Secretary of State (see motion to advance), Bryant could be tried in England upon the charge of forgery in having made false entries.

The crime of false entries as charged in the complaint is not included either in the treaty of 1842 or in the treaty supplementary thereto proclaimed in 1890, and though there has been no contention made in this proceeding that Bryant could be extradited for the crime of *false entries*, the claim has been made and sustained by the Commissioner that as by statute in the State of New York the making of false entries in books of account has been declared to be forgery in the third degree, that, therefore, Bryant is extraditable for *forgery in having made false entries.*

It is well known that prior to the ratification of the additional treaty of 1890 between the United States and Great Britain both governments made frequent demands upon each other for the extradition of persons charged with forgery in having made false entries in books of account, and it was uniformly held both by the Courts of England and the United States that in order to extradite a person under the charge of forgery the facts constituting the said crime must be sufficient to make out a case of forgery at common law as it was understood between the two countries in 1842 at the time of the ratification of the said treaty.

In Windsor, 6 *B. & S.*, 529:

The United States made a demand upon Great Britain for the extradition of Windsor, charging him with forgery in having made false entries in books of account of the Mercantile National Bank.

Windsor was an officer of the Mercantile Bank, in the City of New York, and embezzled $200,000 of the funds of the bank and made false entries in the books of account of the bank to conceal his embezzlement.

The government of Great Britain refused to grant the extradition of Windsor upon the express ground that the crime of false entries was not extraditable as forgery under the treaty between the United States and Great Britain.

This question was again directly passed upon by Mr. Justice Brown.

In re Tully, 20 *Fed. Rep.*, 812.

A demand was made by the English government for the extradition of Tully, charging him with the crime of forgery in that he had made false entries in the books of account of a London bank for the purpose of concealing the embezzlement by him of large sums of money, and Mr. Justice Brown, reversing the judgment of Commissioner Lyman, who held Tully for extradition, discharged the aforesaid Tully upon the express ground that the crime of false entries did not constitute forgery within the meaning of that term in the treaty of extradition between the United States and Great Britain.

Mr. Justice Brown says, "the Statute of the State of New York making the offence (false entries) forgery in the third degree was held, and no doubt rightly, not to extend the force of the treaty to offences not embraced within the definition of forgery at the time when the treaty was executed."

Ex parte Eno, 10 *Q. L. R.* 194.

The United States Government made a demand upon the Government of Great Britain for the extradition of John C. Eno. Five indictments were found against him by the Grand Jury of the County of New York, three of which were for forgery in the third degree and one for forgery in the second

degree, in having made false entries in the books of account of the Second National Bank to conceal embezzlement of over $500,000, and one for common law forgery.

The indictments were offered in evidence as proof of the facts therein alleged, but the Court held that they could not be admitted for that purpose.

Eno was brought before Mr. Justice Caron of the Superior Court of Quebec on *habeas corpus*, and it was held that the offense to be extraditable, must be shown to be that recognized as forgery at the time of the making of the treaty in 1842, and that that was the making or altering of a writing so as to make the writing or alteration purport to be the work of some other person, which it was not.

In accordance with this definition, he held that neither the false entries in the books of the bank nor the false slips or tickets given to the employees of the institution, constituted forgery. Eno was accordingly discharged.

In his opinion in that case Mr. Justice Caron quoted with approval the opinion of Mr. Justice Brown, *in re Tully*, and the opinion of Mr. Justice Cockburn *in re Windsor*. The leading text writers on this subject since the execution of the Treaty of 1890 making certain additional crimes extraditable, lay down the same rule.

Moore, in his work on Extradition, paragraph 345, says: "It has been held that a mere change in the classification of a crime, such as the designation of embezzlement of a certain kind as forgery in the third degree by the New York Code does not affect an extension in the operation of the treaty so as to render a person charged with such an offense extraditable, if he would not have been so previously."

See to the same effect

Spear on Extradition, 276.

Clark on Extradition, 131, 134, 138 and 139.

Wharton's Criminal Law, Vol. 1, Section 696.

We therefore respectfully submit, that the crime of false entries is not an extraditable crime, and that Bryant should not be held for extradition upon the charge of forgery and be tried in England for making false entries.

Point III.

There was no proof of criminality presented to the Commissioner as to the *embezzlement or larceny* of the 280 pounds.

The evidence to sustain this charge is even more flimsy than that advanced to sustain the charges of forgery. An examination of the record in this case will show that the only evidence tending in any way to support the charge of larceny or embezzlement of the 280 pounds referred to is that contained in the deposition of James Elliott Park as follows: "*I believe that he (Bryant) has also in some way taken the further sum of 280 pounds, making 2,000 pounds, the amount of the said false entries in the books of the said firm.*" The holding of Bryant for extradition on this charge was clearly erroneous, and if for no other reason the proceedings should be remitted to the Commissioner for the purpose of correcting his certificate to the Secretary of State, that there was legal evidence to hold Bryant for extradition upon the charges of the larceny and embezzlement of the said 280 pounds.

Point IV.

It was error for the Commissioner to hold that the facts relating to the three checks were sufficient to warrant a commitment upon the charge of forgery of the names of Morrison and Marshall and obtaining money upon such forgery from the Bank and at the same time to hold that the same evidence warranted the commitment for larceny or embezzlement from Morrison and Marshall. It was also error for the Commissioner to hold that the facts relating to the said checks were sufficient to warrant a commitment for embezzlement and larceny from Morrison and Marshall, and that the same evidence would warrant a finding that Bryant obtained the same money from the Bank upon forged checks.

The bare statement of this proposition ought to be sufficient to demonstrate it.

The findings above referred to by the Commissioner are absolutely irreconcilable and inconsistent. If Bryant obtained money from the Bank by means of forged checks it is inconceivable how the same evidence should warrant a finding by the Commissioner that he obtained the same money by larceny from Morrison and Marshall; and if the evidence is sufficient to warrant the Commissioner in holding that Bryant obtained money from Morrison & Marshall by larceny, it is equally absurd to say that he obtained the same money by embezzlement from Morrison & Marshall. The facts disclosed in the record are either legal evidence of forgery or they are not, and if they are not legal evidence of forgery it was the duty of the Commissioner to discharge Bryant and not hold him for extradition upon the charge of forgery.

If the evidence warranted holding Bryant for larceny or embezzlement, then the same evidence, in

the very nature of things, cannot warrant the Commissioner in holding him for forgery.

The Commissioner in his certificate to the Secretary of State certifies that the evidence adduced before him is sufficient to sustain the charges of forgery, larceny and embezzlement, as set forth in the complaint, and if this Court, upon reading the rec ord, comes to the conclusion that the evidence did not warrant holding Bryant on either one or all of these charges, the proceedings certainly should be remitted and the certificate corrected.

The treaty of 1842 specifically provides that a surrendered prisoner shall be tried only for the particular offense for which he may be surrendered, and the record in this case now shows that Bryant has been surrendered for trial for the crimes of forgery, forgery in the third degree, larceny and embezzlement, and we respectfully submit that the evidence is totally insufficient to warrant the Commissioner in holding Bryant upon any of the charges, and that he should be discharged.

Respectfully submitted,

LORENZO SEMPLE.
T. D. SEMPLE.

167-104

167-104

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.—NO. 779.

THOMAS PHILLIPS BRYANT,
Appellant,

vs.

THE UNITED STATES *et al.*

779

BRIEF FOR H. B. M. CONSUL GENERAL, AT NEW YORK, APPELLEE.

On appeal from an order of the Circuit Court of the United States for the Southern District of New York, dismissing writs of *habeas corpus* and *certiorari*.

STATEMENT.

In proceedings instituted by the appellee, under the treaty between the United States and Great Britain, before Commissioner Shields, in the Southern District of New York, for the extradition of the appellant upon the charges of forgery, utterance of forged paper, larceny and embezzlement, the appellant was committed by the Commissioner, he deeming the evidence sufficient to sustain the charges of forgery, embezzlement and larceny, under the provisions of said treaty until a warrant for his surrender should issue or he should be otherwise dealt with according to law (p. 12).

After the dismissal of the writs by the Circuit Court, and prior to the appeal to this Court, the Department of State

issued a warrant for the surrender of the appellant upon the charges of forgery and embezzlement.

In the complaint (page 4) made by the appellee before the Commissioner, the appellant was charged with, in the City of London, in England, between the 23rd day of June, 1896, and the 10th day of September, 1896.

1. Stealing three bank checks, the property of the firm of Morrison & Marshall.

2. Stealing £2,000 sterling, the property of the same firm.

3. Embezzling three bank checks, the property of his employers, the said firm of Morrison & Marshall.

4. Embezzling £2,000 sterling, the property of his employers, the said firm of Morrison & Marshall.

5. Forging, and thereafter uttering, well knowing the same to be forged, a certain bank check, purporting to be drawn by the said firm of Morrison & Marshall, on the Commercial Bank of Scotland, bearing date on or about June 23rd, 1896, for the sum of £500 sterling, with intent to defraud the Commercial Bank of Scotland.

6. Forging and thereafter uttering, well knowing the same to be forged a certain bank check, purporting to be drawn by the said firm of Morrison & Marshall, on the Commercial Bank of Scotland, bearing date on or about August 14th, 1896, for the sum of £500 sterling, with intent thereby to defraud the said Commercial Bank of Scotland.

7. Forging and thereafter uttering, well knowing the same to be forged, a certain bank check, purporting to be drawn by the said firm of Morrison & Marshall, on the Commercial Bank of Scotland, bearing date on or about September 10th, 1896, for the sum of £720 sterling, with intent thereby to defraud the said Commercial Bank of Scotland.

8. With, between the 23rd day of June, 1896, and September 10th, 1896, being in the employment of the said firm of Morrison & Marshall, as bookkeeper and assistant cashier, falsifying the books of account of the said firm of

Morrison & Marshall by entering a fictitious account in the ledger of said firm, in the name of T. H. North, and crediting to said account the sum of £2,000 sterling, which entry he charged in addition to the suspense account of said firm, and also, made two false entries in the said fictitious account in the name of T. H. North, debiting the said account with the sum of £780 sterling and £1,220 sterling, respectively; and did also falsify the books of account of said firm by making entries in the cash book of the said firm of the sum of £780 sterling and £1,220 sterling, which did not represent any transaction or transactions of the said firm.

9. With intent to conceal the larceny or misappropriation by him of the sum of £2,000 sterling, making false entries in the books of the said firm of Morrison & Marshall, by debiting in the suspense account in the ledger of the said firm, the sum of £2,000 and carrying said debit of £2,000 to the credit of a fictitious account opened by him in said ledger in the name of T. H. North, and by entering and debiting the said fictitious account T. H. North with the sum of £780 and £1,220 sterling, respectively; and also by entering in the cash book of the said firm the said sums of £780 and £1,220 respectively, and that the said entries so made in the said ledger and cash book did not represent any transaction or transactions of said firm.

The information and depositions introduced in evidence show :

That the appellant was employed by the firm of Morrison & Marshall, of London, as bookkeeper and assistant cashier from January, 1896, to October, 1896 (p. 13), at a salary of £104 per annum (p. 16).

That the appellant had under his control the cheque books of the firm and the old cheques received back from the bank.

That he was not authorized to sign the firm name on cheques (p. 14).

That the firm of Morrison & Marshall had an account with the Commercial Bank of Scotland, at their London office (p. 14). This account was charged with three checks as follows :

Date of Debit in Passbook.	No. of Check.	Amount.
1896, June 23.	698	£500
" August 14.	54 364	£500
" September 10.	54 373	£720

Particulars of these checks were not entered on the counterfoils in the cheque books and the checks are not among those received back from the bank in the ordinary way. These three checks were abstracted from two cheque books which were not in use and no particulars appear at all on the counterfoil (p. 14); and were presented to the Commercial Bank of Scotland, by the National Provincial Bank of England, for their Aldersgate street branch and paid, and the amounts of the cheques debited to Morrison & Marshall's account (p. 16).

The appellant had an account in the branch of the National Provincial Bank of England in Aldersgate street, and deposited these three checks to his credit; the checks being deposited respectively, the day before they were presented to Morrison & Marshall's bank and paid, and the appellant drew out the greater part of the checks deposited by him (pp. 18, 19).

The firm of Morrison & Marshall had a sum exceeding £5,000 carried to the credit of a suspense account in their ledgers and the appellant brought £2,000 from such suspense account to the credit of a fictitious account which he opened in the ledger in the name of T. H. North. Against this credit he debited the account of T. H. North, with two items, £780 and £1,220. The £780 was posted in the ledger from the cash book and consisted to the extent of £500 thereof, of the amount of the check of £500 paid by Morrison & Marshall's bank on June 23, 1896, and the £1,220 item was in respect to the two checks of £500 and £720 respectively, paid on August 14, 1896, and September 10th, 1896. These amounts the accused did not carry out in the cash column of the cash book; but in order that the balances of the ledger, cash book and banker's pass book should agree added the sum of $1,220 to the total at the bottom of the page, notwithstanding that amount was not in the column nor was there any entry in the cash book relating to the £1,220 which could be posted to North's fictitious account (pp. 16, 17).

The Commissioner filed a memorandum (p. 24) on rendering his decision in which he says:

"The evidence clearly shows that the firm of Morrison & "Marshall was criminally defrauded out of £2,000 by the de-

" fendant and by practices which, however viewed, constitute " a crime specifically mentioned in the treaty stipulations be- " tween the two countries. If the moneys of that firm were " not actually obtained as the proceeds of forgery, possession " of them was obtained by the defendant in some way, and " once in possession were converted to his own use ; and it " ought to be immaterial to this country whether on the facts " appearing in these proceedings the English government shall " put the defendant on trial for forgery, for embezzlement, or " for larceny."

The contention before the Circuit Judge was, that the charge of forgery was not established, but if the evidence as to the forgery of three checks was deemed sufficient, then the appellant could not be held upon the charge of larceny or embezzlement as to the moneys represented by the checks.

As to the sum of £280 of the £2,000 the appellant is charged with misappropriating, the appellee concedes that the evidence (pp. 14, 17) would not be sufficient to hold the appellant.

POINTS.

I.—There can be no question that as to the moneys received by the appellant on the three checks he was guilty either of forgery or embezzlement, and there was competent evidence before the Commissioner to justify the latter in holding the accused.

In *Benson* v. *McMahon*, *127 U. S. Rep.*, *457*, an extradition case, it was held

" That the question to be determined is whether " the commission of the crime alleged is so established " as to justify the prisoner's apprehension and commit- " ment for trial, if the offense had been committed in the " United States and the proceeding resembles in its character, " preliminary examinations before a magistrate for the pur- " pose of determining whether a case is made out to justify " the holding of a person accused, to answer to an indict- " ment."

If the crimes alleged had been perpetrated in this country, and the appellant had been committed to await the action of the grand jury, the latter body upon evidence similar to that introduced before the Commissioner, would be justified in indicting the appellant for the crimes of forgery and embezzlement. It is not contended or asserted that if the appellant should be convicted for forgery in connection with the checks, he could be again placed on trial upon the charge of embezzlement, in connection with the checks.

As was further said in *Benson* v. *McMahon*, *supra*, "as "the accused is not now upon final trial, but the only question "is whether he has committed an offense for which according "to the treaty he should be extradited to that country and "tried, we do not see that in this application to set the prisoner at large after he has been once committed by an examining Court having competent authority, and after having "been held to answer in Mexico for the offense charged, this "Court is bound to examine with very critical accuracy into "the question as to whether or not the act committed by the "prisoner is technically a forgery under the common law. "Especially is this so when the wickedness of the act, the "fraudulent intent with which it was committed and the final "success by which the fraud was perpetrated are undoubted."

II.—A writ of *habeas corpus* in a case of extradition can not perform the office of a writ of error. If the Commissioner had jurisdiction of the subject matter, and of the person of the accused, and the offense charged is within the terms of the treaty of extradition, and the Commissioner in arriving at a decision to hold the accused, has before him competent legal evidence upon which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused, for the purposes of extradition, such decision cannot be reviewed by a Circuit Court, or by this Court on *habeas corpus* either originally or by appeal.

Re. Oteiza y Cortes, 136 U. S. Reports, 334.
Benson v. McMahon, 127 U. S. Reports, supra.

Where a Commissioner has jurisdiction of extradition pro-

ceedings, and has before him legal and competent evidence as to the criminality of the accused, he is made the judge of the weight and effect of the evidence, and the Court has no power to review his action.

Re. Stupp, 12 Blatch., 501.
Re. Van de Velpen, 14 id., 137.
Re. Wahl, 15 id., 335.
Re. Wadge, 21 id., 300.
Re. Bherenz, 22 Fed. Rep., 700.
Re. Breen, 73 id., 458.

In the case of Ornelas *v.* Ruiz, reported in *161 U. S. Reports*, at page512, Chief Justice Fuller, delivering the opinion of the Court, says; "Nor are we concerned with the question of the "actual criminality of petitioners, if the Commissioner had "probable cause for his action. It is enough if it appears that "there was legal evidence on which the Commissioner might "properly conclude that the accused had committed offences "within the Treaty as charged, and so be justified in exercising "his power to commit them to await the action of the Execu-"tive Department. The rule as to probable cause was thus "laid down by Mr. Chief Justice Marshall, sitting as commit-"ting magistrate in *Burr's case:* 'On an application of this "'kind, I certainly should not require that proof, which would "'be necessary to convict the persons to be committed on a trial "'in chief; nor should I even require that which should abso-"'lutely convince my own mind of the guilt of the accused; "'but I ought to require, and I should require, that probable "'cause should be shown; and I understand probable cause to "'be a case made out by proof furnishing good reason to be-"'lieve that the crime alleged has been committed by the per-"'son charged as having committed it.' 1 Burr's Trial, 11; "Benson *v.* McMahon, 127 U. S., 457, 462; *In re.* Farez, 7 "Blatchford, 745; *In re.* Ezeta, 62 Fed. Rep., 972, 981.

"We are of opinion that it cannot be held that there was "substantially no evidence calling for the judgment of the "Commissioner as to whether he would, or would not, certify "and commit under the statute, and that, therefore, as matter of

"law he had no jurisdiction over the subject matter; and this "being so his action was not open to review on *habeas corpus.*"

III.—A demanding government ought not be compelled to elect before a Commissioner for which crime extradition shall be asked, if the evidence shows acts or facts, which may constitute different crimes within the treaty for extradition.

If the accused should be placed upon trial for forging the three checks, and should be acquitted upon the ground that the checks alleged to be forged were not produced (although the evidence here indicates that the appellant destroyed the checks), why should the prosecution not have an opportunity of placing him on trial for embezzlement?

As said by Bishop, in his work on Criminal Law, Vol. 1, 778: "On trial election can be compelled to be made, but the "law, in advance, draws its lines around a clustered combina- "tion of act and intent and makes what is within those lines "punishable as a specific offence; then, around another, and "another, and so on until it is deemed to have gone far enough "and stops. It is, therefore, not only theoretically but prac- "tically competent for a person to do in one transaction what "will be within more than one of these circles of the law."

IV.—The appellant can be held for forgery, upon the charge of making false entries in the books.

The treaty between the United States and Great Britain provides that the surrender shall only be "done upon such evi- "dence of criminality as according to the laws of the place, "where the fugitive or person shall be found would justify his "apprehension and commitment for trial if the crime or "offence had been committed."

The treaty determines and defines upon what evidence a surrender shall be granted, *i. e.*, upon such evidence of criminal-

ity as according to the place, that is so far as this particular proceeding is concerned, the State of New York, would justify the apprehension and commitment for trial if the offence had been committed here. This is the test, and manifestly so, for if not, then proceedings of this character, instead of being as they are, mere preliminary proceedings, become of the same effect as a trial, which the treaty never contemplated. That the laws of New York are to govern this proceeding, we refer to

Vol. 4, Opinions U. S. Atty. General, 330.
Re. Farez, 7 Blatchford, supra, 357.
Re. Wadge, 15 Fed. Rep., 865.
Re. Charleston, 34 Fed. Rep., 533.

The Penal Code of the State of New York provides : §514. A person who either

1. Being an officer or in the employment of a corporation-association, partnership or individuals *falsifies* or unlawfully or corruptly alters, erases, obliterates or destroys any accounts, books of account, or other writing belonging to or appertaining to the business of the corporation, association or individuals * * * is guilty of forgery in the third degree.

§ 515. A person, who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property either

1. Alters, erases, obliterates or destroys an account, book of accounts, record or writing, belonging to or appertaining to the business of a corporation, association, public office or officer, partnership or individual ; or,

2. Makes a false entry in any such account, or book of accounts * * * is guilty of forgery in the third degree.

The depositions show that the appellant to conceal his misappropriations of the moneys of Morrison & Marshall, opened a fictitious account in the name of T. H. North, in the ledger of the firm, and credited this account with the sum of £2,000, which he brought from a suspense account on the ledger of

the firm and charged this account with two items amounting to £2,000, and in the cash book of the firm made a false total of £1,220 at the bottom of a page.

This Court in Benson *v.* McMahon, *supra*, say: "Another "circumstance in connection with this matter is, that this "Court has frequently decided that there are no common-law "crimes of the United States. In very few of the States were "there common-law crimes remaining as subjects of pun- "ishment at the time when this treaty was made. Almost "every State in the Union has recast her criminal law by the "enactment of statutes in such a mode that the common law "is now only appealed to as an aid in the definition of crimes."

In the *Tully case, 20 Fed. Rep., 812*, which we assume the counsel for accused will refer to and contend that by reason of that decision the accused cannot be held for forgery for making false entries in the books, Judge Brown discharged Tully on a writ of *habeas corpus* upon the ground that in the *Windsor case, 6 Best & S., 522*, the Court of Queen's Bench had held, that making false entries in books was not forgery although in his opinion he says: "When such entries are "made falsely and fraudulently in order to conceal embezzle- "ment, they might well, I think under the law, be held to be "forgeries at common law, as papers falsely made to the pre- "judice of the bank; because capable of being made use of in "connection with his own oath as evidence against it; and "the false manufacture or written evidence against another is "clearly forgery."

V.—The effect of the decision in the Tully case has, in any event, been abrogated by the Supplemental Treaty of 1889 between the United States and Great Britain. (Vol. 26, U. S. Stat. at L., p. 1508.) This Supplemental Treaty provides, that the provision of the Tenth Article of the Treaty of 1842 should be made applicable to additional crimes, enumerating them, the effect of which is, we submit, that the Tenth Article of the

Treaty of 1842 is made applicable not only to the additional crimes mentioned in the Supplemental Treaty but to the crimes which were originally mentioned in the Treaty of 1842, so that whatever came within the enumeration of any crime mentioned in either Treaty which was a crime in the year 1889, proceedings for the extradition, for instance for forgery, can be based, not only for common law forgery, but for any forgery that was such, either by statute or common law in the year 1889, for, if this were not so, the crimes mentioned in the Supplemental Treaty, being added to the Treaty of 1842, the claim could just as rightfully be made that unless the facts which made these crimes in the year 1889, were so in the year 1842, they were not within the Treaty.

Our position as to the effect of the Supplemental Treaty is more clearly manifest, when its Seventh Article is considered, providing for the surrender of persons convicted of any of the crimes mentioned in either Treaty, whose sentence, therefore, shall not have been executed. If the contention of counsel for the appellant is correct, one convicted for forgery to-day in England, who should escape, he could not be extradited, except his conviction was for a common law forgery.

This was never the intention of the two Governments, as by Article VIII. of the Supplemental Treaty, it is declared that the latter is not retroactive and does not apply to any conviction which shall have been pronounced prior to the date at which the Treaties went into force.

VI.—The commitment of the accused, by the Commissioner, was proper, and the order of the Circuit Court should be affirmed.

CHARLES FOX,
Of Counsel for H. B. M. Consul General,
Appellee.